

No. 13-20-00355-CV

Court of Appeals, Thirteenth District  
Corpus Christi – Edinburg, Texas

FILED IN  
13th COURT OF APPEALS  
CORPUS CHRISTI/EDINBURG, TEXAS

8/28/2020 2:21:19 PM

---

Hidalgo County Water Improvement District No. 3  
*Appellant*

KATHY S. MILLS  
Clerk

vs.

Hidalgo County Irrigation District No. 1  
*Appellee*

---

Appeal from the County Court at Law No. 1  
Hidalgo County, Texas  
Cause No. CCD-0517-D

---

RESPONSE TO EMERGENCY MOTION FOR TEMPORARY ORDERS

**J. Joseph Vale**  
[jvale@atlashall.com](mailto:jvale@atlashall.com)  
State Bar No. 24084003  
**Daniel G. Gurwitz**  
State Bar No. 00787608  
**Meredith D. Helle**  
State Bar No. 24106188

**ATLAS, HALL & RODRIGUEZ, LLP**  
818 Pecan/P.O. Box 3725  
McAllen, Texas 78501  
(956) 682-5501 (phone)  
(956) 686-6109 (facsimile)

Attorneys for Appellee  
Hidalgo Irrigation District No. 1

August 28, 2020

## **TO THE HONORABLE COURT OF APPEALS:**

Condemnee-Appellee Hidalgo County Irrigation District No.1 (District 1) files this Response to Condemnor-Appellant Hidalgo County Water Improvement District No. 3's (District 3) Emergency Motion for Temporary Orders. District 1 respectfully shows the following:

### **I. District 1 opposes the motion for temporary relief.**

District 3 claims that it needs the emergency relief so that it can install a pipe below District 1's pipes near the intersection of Freddy Gonzalez and the extension of Bicentennial Boulevard. It would be risky and dangerous to the employees of the contractor who was hired to install the Bicentennial Boulevard extension and utilities, as well as to District 1's infrastructure, if the contractor goes forward under the only engineering plan District 3 has ever presented. *See* Corbitt affid. ¶ 6. The damage to District 1 will be incalculable if this court grants the motion for emergency relief. District 1 implores the Court to closely review the affidavit of Yara Corbitt, who is not affiliated with either District 1 or District 3, so that it understands both the risks to District 1 and that the delays regarding the installation of District 3's pipe are self-inflicted by District 3. The legal bases for District 1's objection appear below.

District 1 opposes District 3's emergency motion for relief. District 1 further objects to District 3's failure to comply with the Rules of Appellate Procedure by failing to make any attempt—much less a reasonable attempt—to confer with District 1 before filing its motion. *See* Tex. R. App. P. 10.1(a)(5). District 1's counsel did not know that this emergency motion was being filed until they received the motion late yesterday afternoon.

As discussed further below, no emergency exists that would justify depriving District 1 of the normal 10 days to respond to District 3's motion. *See infra* § III. District 1 provides this limited, initial response out of an abundance of caution to the extent the Court intends to decide District 3's motion on an emergency basis.

The Court should keep in mind that the record is incomplete and one-sided as a result of District 3's tactics. As explained in the next section, the trial court has ruled correctly that it cannot grant post-judgment possession of the property or grant any other relief or disregard that it has decided it lacks subject-matter jurisdiction since it previously has decided that it lacks jurisdiction in this case. District 1, however, did not have an opportunity to respond to District 3's post-judgment motion in the trial court seeking possession. After spending two weeks assembling its post-judgment motion, District 3 filed the motion without any advance warning to District 1, just as it did in this Court. It asked the trial court to grant the relief

without holding a hearing. *See* D.1's Ex. 4 (email). The trial court never held a hearing on District 3's motion and instead took the matter under advisement after a phone conference on August 19, 2020, during which District 1 requested an equal 14 days to file a response, if the court was going to entertain the motion. The trial court declined to entertain the motion, and there was no need for a written response from District 1. *See* D.3's Ex. A-9.

**II. The Court should deny the request for temporary relief because temporary possession cannot be granted without jurisdiction.**

The Court should deny District 3's motion for post-judgment temporary relief. The trial court ruled that it lacks subject-matter jurisdiction and thus dismissed the entire case. *See* D.3's Ex. A-7. Lacking jurisdiction, the trial court properly ruled that it could not grant further relief to any party. When a court lacks jurisdiction, it can grant no further relief because any relief it could grant would be void. *See In re United Servs. Auto. Ass'n*, 307 S.W.3d 299, 309 (Tex. 2010) (orig. proceeding) ("A judgment is void if rendered by a court without subject matter jurisdiction."); *In re Tex. Dep't of Family & Protective Servs.*, 415 S.W.3d 522, 530 (Tex. App.—Houston [1st Dist.] 2013, orig. proceeding) (issuing mandamus to overturn order issued without jurisdiction). When a court lacks jurisdiction, the proper remedy is to set aside all orders in the case and to dismiss the case. *See, e.g., City of Krum v. Rice*,



543 S.W.3d 747, 749–50 (Tex. 2017). As a result, without jurisdiction, courts also cannot grant relief to protect the so-called “status quo.” *See, e.g., Hyde v. Ray*, 181 S.W.3d 835, 843–44 (Tex. App.—Fort Worth 2005, no pet.) (holding temporary injunction to preserve status quo was void due to lack of jurisdiction).

District 3 cites no authority indicating that it can “suspend” a jurisdictional dismissal order and obtain affirmative post-judgment relief despite the court’s lack of jurisdiction. Section 21.021 of the Property Code depends on the entry of a special commissioners’ award. *See* Tex. Prop. Code Ann. § 21.021(a) (providing right to possession only “[a]fter the special commissioners have made an award in a condemnation proceeding”). By signing the order dismissing the case for want of jurisdiction, every order in the case has been vacated as void, and the parties are returned to their positions as if the suit had never been filed. *See Rice*, 543 S.W.3d at 749–50. In other words, the trial court never had jurisdiction to appoint the special commissioners. *See id.* As a result, District 3 has no statutory right to possession even under the statute District 3 cites.

The trial court’s final judgment in this case does not award any relief to any party, and District 1 does not have any judgment to “enforce” against District 3. As a result, this Court should decline to grant District 3 temporary post-judgment relief in the name of “supersedeas.”

Moreover, the issue of whether the trial court had jurisdiction is the ultimate question on the merits in this appeal, which should be decided before a three-justice panel and only after full briefing. For the sake of this short response, however, District 1 notes that the trial court's jurisdictional ruling was correct, that the legal principle advanced by District 1 is neither novel nor unprecedented, and the Texas Supreme Court has thus far declined to answer the question of whether the Legislature has waived governmental immunity for water districts like District 1 for eminent domain suits. District 1 attaches its trial court brief in support of the Plea to the Jurisdiction for the Court's consideration, which District 3 inexplicably excluded from the exhibits it filed with its motion. *See* D.1's Ex. 3 (D.1's Reply to Resp. to Plea to the Juris.). If anything is novel and unprecedented, it is District 3's request to "suspend" a jurisdictional dismissal and then have this Court grant it affirmative relief, without a hearing in the trial court or full briefing in this Court.

**III. If the Court is inclined to consider District 3's motion, no emergency exists that would justify depriving District 1 of the normal 10-day period to respond.**

District 1 objects to District 3's characterization of its motion as an "emergency" motion. District 3's own, intentional delays in requesting possession or timely pursuing relief in the trial court demonstrate that there is no such

emergency. After filing its condemnation suit on November 14, 2019, it took District 85 days to obtain the Special Commissioners' Award (and District 1 actually accelerated the process by agreeing to waive notice and accept service of the Special Commissioners' Hearing notice). *See* D.1's Ex. 1 (D.3's Orig. Pet.); D.1's Ex. 2 (D.1's Waiver & Acceptance of Service of Notice of Hrg.); D.3's Ex. A-2. District 3 then delayed another 138 days after the special commissioners' award (February 12, 2020) to file its motion requesting a writ of possession (June 29, 2020). D.3's Exs. A-2, A-6. After the trial court dismissed the case on August 3, 2020, District 3 waited another *14 days* to file an emergency motion requesting a post-judgment writ of possession. *See* D.3's Ex. A-7, A-8. As with the emergency motion filed in this court, District 3 neither conferred with District 1 nor gave it any advance notice that it would be filing the motion for emergency relief. In fact, it asked the trial court to enter an order on the motion for emergency relief *without a hearing*. *See* D.1's Ex. 4 (email); D.3's Ex. A-8 (requesting possession without requesting hearing or requesting setting). After the trial court declined to rule on District 3's post-judgment motion (August 24, 2020), District 3 again waited another three days to file the present motion in this Court. *See* D.3's Ex. A-9. Of course, it wants this Court to rule on the motion without allowing sufficient time (or even equal time) for District 1 to respond.

#### **IV. Any “emergency” for district 3 is self-inflicted.**

Moreover, District 3’s long delays in doing what is necessary to have its pipeline installed across the property made the subject of this suit are solely the result of District 3’s own conduct.

District 3 has known for at least a year that it intended to place a pipeline across the property that is the subject of this suit. On August 28, 2019, it entered into an agreement with the City of McAllen regarding installation of District 3’s pipeline. *See* Ex. D-2 to Ex. D to D.1’s Ex. A-8 (2019 Interlocal Agreement). That agreement is the subject of a separate suit between District 1, the City of McAllen, and District 3. In that suit, District 3 has alleged that the City of McAllen breached its agreement with District 3. *See* D.1’s Ex. 6 (D.3’s Countercl.).

The agreement between the City of McAllen and District 3 required District 3 to obtain all permits related to installation of the pipeline from all government agencies *prior to the date the City of McAllen awarded a contract to install the pipeline*. *See* 2019 Interlocal Agreement ¶ 3 (“To the extent that any other permit may be required for the proposed pipeline extension from any government agency other than the City, District [3] shall be responsible for obtaining any such permits and shall provide evidence of having obtained same to City prior to the award of the contract for the irrigation pipeline installation.”). That contract was awarded to

Texas Cordia Construction (TCC) on or about December 3, 2019. *See* Yara Corbitt Affid. ¶ 1. As of that date, District 3 neither had a permit from District 1 nor had it filed its condemnation suit.

District 3 claims that it spent \$779,000, plus legal fees and engineering fees *in reliance on the agreement with and representations by the City of McAllen*. *See* D.3's Countercl. against City of McAllen, § 4.10. It did not expend those funds on reliance on any representation by or acts of District 1. Moreover, District 3 made those expenditures *knowing* that it had not obtained the permits required of District 3 under its agreement with the City of McAllen.

District 3's engineer, Frank Ferris, claims that if the emergency relief is not granted, District 3 *may* lose its substantial investment. First, that it *may* lose its investment is not grounds for emergency relief. Second, that District 3 may lose its investment is entirely its own fault. District 3 knowingly chose to risk its investment by proceeding to order pipe and hire lawyers and engineers *before* it had obtained all permits (or ownership of the land) to install its pipeline. For more details, District 1 has attached its petition from its lawsuit against McAllen for breach of contract (D.1's Ex. 5), as well as District 3's counterclaims in that suit (D.1's Ex. 6).

Moreover, even assuming the Court were to grant District 3 immediate possession of the subject property tomorrow, there would be no "savings" realized

by District 3 by obtaining the emergency relief. In order to avoid the additional costs that arise from installing the District 3 pipeline *after* the base, subgrade, curb and gutter, and one layer of hotmix is installed, TCC would have had to have received complete engineering plans no later than May 2020. *See* Corbitt affid. ¶ 8. Since TCC did not receive such a plan timely, the cost to install the pipe will change very little going forward. *See* Corbitt aff. ¶ 8. Moreover, TCC will not undertake installation of the pipeline because of the risk it presents to TCC's employees and District 1's pipes and canals. *See* Corbitt affid. ¶¶ 6–8. District 3 has known for at least five months that the engineering plans it prepared regarding the installation of its pipeline through the property made the subject of this suit are insufficient for TCC to price the work or to undertake the work. *See* Corbitt affid. ¶ 7.

Since no emergency exists, the Court should grant District 1 the normal ten days for responding to this motion if the Court intends to entertain it further. Additionally, District 1's undersigned appellate counsel, J. Joseph Vale, has an opening appellate brief due on Monday, August 31, 2020, in No. 04-20-00018-CV, *Dicex Int'l, Inc. v. Amigo Staffing, Inc.*, Court of Appeals for the Fourth District, San Antonio, Texas. That brief has been extended three times, and the San Antonio Court of Appeals has stated that no further extensions will be granted.

District 1 alternatively requests the three days that District 3 had to file its motion after the trial court's decision not to rule on District 3's request for relief.

**V. District 1 has no adequate legal remedy if relief is granted, and granting the requested relief would damage District 1's infrastructure, as well as the water supply to Edinburg, Texas.**

Granting District 3 possession for the duration of the appeal would irreparably harm District 1 in at least two ways.

First, the damage to District 1 and to its customers, including the City of Edinburg (which receives a majority of its potable water from District 1), is incalculable if the supply of water to those customers is interrupted. *See* Isael Posadas Affid. ¶ 1; D.3's Ex. A-4 § 2 (discussing District 1's obligations to City of Edinburg). Even if it was calculable, it is unclear that District 1 could recover these damages against District 3 under Section 21.044 of the Property Code.

Second, if the trial court has jurisdiction, the primary issue on the merits of this dispute is whether District 3 can take District 1's property, since District 1 also is a governmental entity that serves the same purpose as District 3. The doctrine that governs that determination asks whether the proposed taking "will practically destroy or at least materially interfere with" District 1's current use of the property. *See Canyon Reg'l Water Auth. v. Guadalupe-Blanco River Auth.*, 258 S.W.3d 613,

617–19 (Tex. 2008). The point of this litigation would be defeated if District 3 is allowed to destroy or materially interfere with the property during this appeal. *See id.*

Meanwhile, District 3 has not established its own irreparable harm. Even if District 3 is required to wait until after Bicentennial Boulevard is paved to install its water line (assuming that relief is granted at the conclusion of the litigation), the only damage to District 3 is the incremental cost increase between starting today and starting at the conclusion of the litigation. The contractor has testified that is not likely a significant cost. *See* Corbitt affid. ¶ 8. District 3’s engineer (Ferris) testified that such delay *may* cause District 3 to abandon the project. *See* Ex. D to D.3’s Ex. A-8 ¶ 19 (Ferris affid.) (testifying only that “the increased cost and difficulties in construction *may* prevent Water District 3 from completing the Pipeline Extension” (emphasis added)).<sup>1</sup> That is, because the engineering plans necessary to install its pipeline were not provided to TCC prior to May 2020 (and still have not been provided), the increased costs about which Ferris complains already exist. *See* Corbitt affid. ¶ 8.

---

<sup>1</sup> This is contrary to statements made by others affiliated with District 3 that irrespective of how long it takes and whether Bicentennial Boulevard is finished, if District 3 prevails, it will install the pipeline no matter the cost.



## **VI. Conclusion**

In seeking to obtain possession of the property in this manner, District 3 aims to disregard jurisdictional issues, “suspend” the jurisdictional dismissal, and (assuming *arguendo* jurisdiction exists) obviate the trial court’s role in deciding the ultimate merits on possession and the right to condemn. In doing so, District 3 asks this Court to rule on possession without considering the underlying issues, including jurisdiction, and without a complete record, complete briefing, or even an opportunity for District 1 to respond. All of this hinges on a fictional emergency that even if it existed, is self-imposed and would only result in District 3 possibly having to spend more money on its pipeline than it would like to spend. The risk and damage to District 1 if the relief is granted incalculable and far exceeds whatever additional funds District 3 *may* have to spend.

The Court should deny the motion or, alternatively, grant District 1 an opportunity to respond in full.

## **Prayer**

District 1 respectfully requests that the Court deny District 3's motion. Alternatively, District 1 requests more time to respond. District 1 also requests such other and further relief at law or in equity to which they may be entitled.

Respectfully submitted,

ATLAS, HALL & RODRIGUEZ, LLP  
818 Pecan/P.O. Box 3725  
McAllen, Texas 78501/78502  
(956) 682-5501 (phone)  
(956) 686-6109 (facsimile)

By: /s/ J. Joseph Vale

**J. Joseph Vale**

State Bar No. 24084003

[jvale@atlashall.com](mailto:jvale@atlashall.com)

By: /s/ Daniel G. Gurwitz

**Daniel G. Gurwitz**

State Bar No. 00787608

[dgurwitz@atlashall.com](mailto:dgurwitz@atlashall.com)

**Meredith D. Helle**

State Bar No. 24106188

[mhelle@atlashall.com](mailto:mhelle@atlashall.com)

*Attorneys for Appellee*

*Hidalgo County Irrigation District No. 1*

### Certificate of Service

I certify that the foregoing document was electronically filed with the Clerk of the Court using the electronic case filing system of the Court. I also certify that a true and correct copy of the foregoing was served on the following counsel of record on August 28, 2020, as follows:

Recipient:	Attorney for:	Served by:
<b>Mr. Frank Weathered</b> FRANK WEATHERED P.C. P.O. Box 6935 Corpus Christi, Texas 78466 <a href="mailto:frank@weatheredlaw.com">frank@weatheredlaw.com</a>	Condemnor/appellant  Hidalgo County Water Improvement District No. 3	Electronically if available, or by email
<b>Mr. W. Brad Anderson</b> JACKSON WALKER, L.L.P. 100 Congress Avenue, Suite 1100 Austin, Texas 78701 <a href="mailto:banderson@jw.com">banderson@jw.com</a>		
<b>Mr. Randolph K. Whittington</b> LAW OFFICE OF RANDOLPH KIMBLE WHITTINGTON 2014 East Harrison Avenue Harlingen, Texas 78550 <a href="mailto:chagofuentes@rkwlaw.com">chagofuentes@rkwlaw.com</a>		

/s/ J. Joseph Vale  
J. Joseph Vale

**STATE OF TEXAS** §  
**COUNTY OF HIDALGO** §

1. My name is Daniel G. Gurwitz. I am one of the attorneys for the appellee in No. 13-20-00355-CV, *Hidalgo Cty. Water Improvement Dist. No. 3 v. Hidalgo Cty. Irrig. Dist. No. 1*, 13th Court of Appeals, Corpus Christi – Edinburg, Texas. I am above the age of eighteen, have never been convicted of a felony or a crime of moral turpitude, and am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct.
2. Exhibits 1, 2, and 3 attached to the appellee’s Response to Emergency Motion for Temporary Orders are true and correct copies of the originals in the trial court’s record in this case.
3. Exhibit 4 attached to the appellee’s Response to Emergency Motion for Temporary Orders is a true and correct copy of the original email I received from Frank Weathered.
4. Exhibits 5 and 6 attached to the appellee’s Response to Emergency Motion for Temporary Orders are true and correct copies of the originals in the trial court’s record in Cause No. 0937-20-A, *Hidalgo Cty. Irrig. Dist. No. 1 v. City of McAllen*, 92nd District Court, Hidalgo County, Texas.

I do declare under penalty of perjury that the foregoing is true and correct.

Page 1 of 2

## **JURAT**

My name is Daniel G. Gurwitz, and my address is 818 W. Pecan Avenue, McAllen, Texas, United States of America. I declare under penalty of perjury that the foregoing is true and correct. Executed in Hidalgo County, Texas on August 28, 2020.

A handwritten signature in black ink, consisting of a long horizontal stroke followed by a large, loopy 'G' and a final vertical stroke.

---

**Daniel G. Gurwitz**

---

---

**AFFIDAVIT OF YARA CORBITT**

---

---

STATE OF TEXAS  
COUNTY OF HIDALGO

§ KNOW ALL MEN BY THESE  
§ PRESENTS:

BEFORE ME, the undersigned authority, in the State of Texas, on this day personally appeared Yara Corbitt, known to me as the person whose name is subscribed to the foregoing Affidavit, and who, being by me first duly sworn, on her oath deposed and stated as follows:

“My name is Yara Corbitt. I am a Professional Engineer and the Chief Executive Officer of Texas Cordia Construction, LLC (“TCC”). I am above the age of eighteen, have never been convicted of a felony or a crime of moral turpitude, and am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct.

1. On or about December 3, 2019, TCC was awarded the contract to construct North Bicentennial Boulevard consisting of grading, Asphalt Concrete Pavement, Lime Treated Subgrade, Flexible Base, Curb & Gutter, Traffic Noise Barrier, Riprap, Irrigation, Storm RCP, Signing, Delineation, and Pavement Markings from Trenton Road to SH107. The City of McAllen has an agreement with Hidalgo County Water Improvement District No. 3 (HCWID 3) regarding the installation of HCWID 3’s pipeline along Bicentennial Boulevard, and part of TCC’s scope of work includes installing HCWID 3’s pipeline.
2. I am aware that Hidalgo County Irrigation District NO. ONE (“HCID 1”) has an open canal just south of the intersection of Freddy Gonzalez Drive and Bicentennial Boulevard in McAllen, Texas (the “Canal”). I also am aware that HCID 1 has two large reinforced concrete pressure pipes (the “Pipes”), which sit on a gravel bed, run east and west below the area of the expansion of Bicentennial Boulevard, and which connect the Canal on each side of Bicentennial Boulevard.
3. TCC began its work under the contract in January, 2020, and we have made steady progress toward completion. TCC reached the area of the HCID 1 Canal and Pipes for roadway construction including subgrade preparation and stabilization, installation of flexible base, curb & gutter, sidewalk and the first lift of ACP on or about mid-June.
4. To extend HCWID 3’s pipeline below the Canal and Pipes, it would require that TCC dig a boring receiving station on the north side of the Canal, bore and excavate material sitting below HCID 1’s Pipes, and install a steel casing. TCC has never received an engineering plan from the owner or HCWID 3 or from anyone else that includes engineering specifications for trench protection, for the receiving station, or any details about the soil conditions around and below HCID 1’s Pipes and Canal.

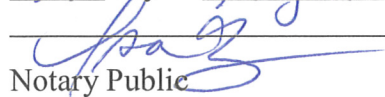
5. The only plan TCC has received for the HCWID 3 pipeline installation in the area of HCID 1's Pipes and Canal is attached as Exhibit A. I have not received an updated plan from the owner, HCWID 3 or anyone else that depicts or supplies additional information requested in order to provide a complete cost proposal.
6. It would be risky and dangerous to TCC's employees and to HCID 1's Pipes and Canal to proceed under the plan listed as Exhibit A without additional requested information, and TCC will not take on that risk.
7. TCC submitted a contingent Change Order cost proposal to the owner in May, 2020 that did not include final pricing for trench protection as TCC had not been provided an engineered plan for trench protection, the receiving station or a geotechnical report, as we had requested from the owner. It was never communicated to TCC that the Change Order was accepted or denied. That Change Order proposal has now expired. In order to prepare a new Change Order, TCC still requires all of the requested information, which still has not been provided by the owner or anyone else. TCC has communicated to the owner for months that TCC needs this information in order to price a complete Change Order and to undertake the work to install the HCWID 3 pipeline below the Pipes.
8. Because the subgrade, base, curb and gutter, and one layer of hotmix has already been installed over the Pipes, it will cost more now to install HCWID 3's pipeline at that location than it would have had TCC been able to install that pipeline before the subgrade, base, curb and gutter, and hotmix layer was installed. At this point, the cost to install HCWID 3's pipeline will change very little irrespective of whether the installation starts now or in 90 days or later. That is, in order to avoid the significant increased costs that result from installing the pipeline after the base, subgrade, and initial layer of hotmix is installed, TCC would have had to have received engineering specifications for trench protection, for the receiving station, the details about the soil conditions around and below HCID 1's Pipes and Canal, and an approved Change Order no later than May, 2020.

FURTHER AFFIANT SAYETH NAUGHT.

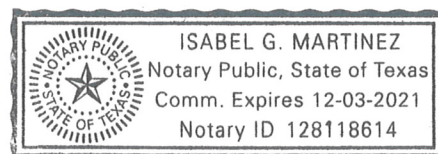
Executed this 28 day of August, 2020.

  
Yara Corbitt

28 day of August, 2020.

  
Notary Public  
State of Texas

My commission expires: 12/03/2021



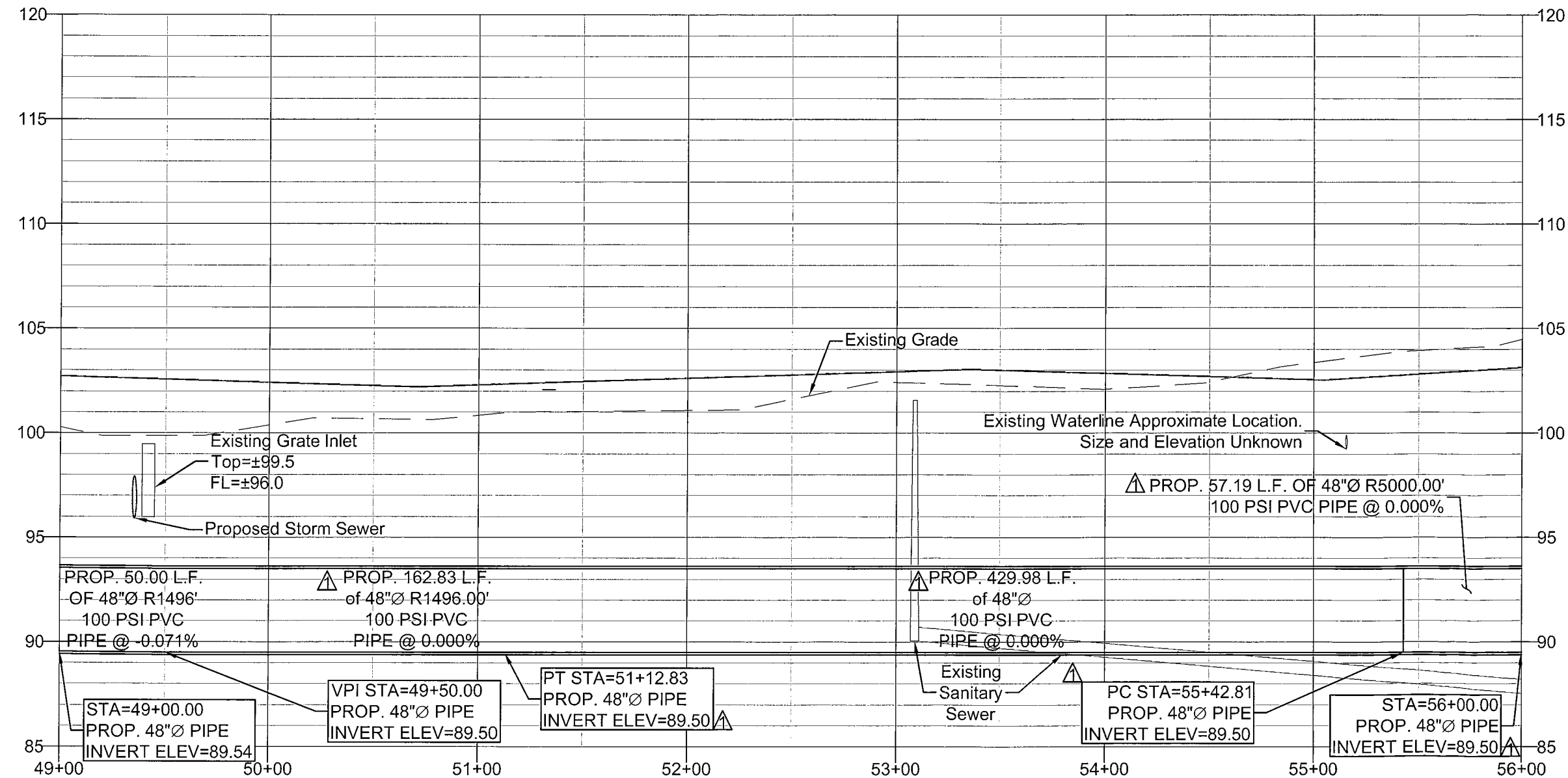
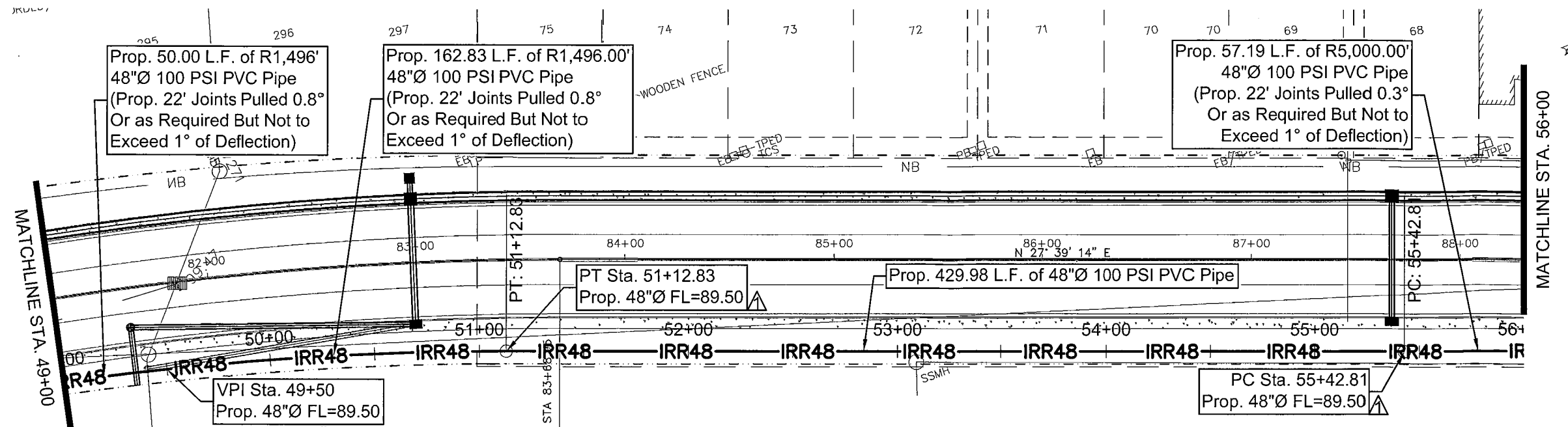
---

EXHIBIT A TO CORBITT AFFIDAVIT

---



F:\0142 HCVID No. 3\142-040 Canal Survey North of Trenton\DWG\142-040 McAllen Data with Surface.dwg, Bicentennial P&P Sheets, 3/17/2020 2:42:59 PM



FIELD VERIFY LOCATION AND ELEVATION OF ALL EXISTING UTILITIES.

# LEGEND

- CI □ INLET
- GI □ GRATE INLET
- MH ○ MANHOLE
- WVO GATE VALVE & BOX
- WM ⊕ WATER METER
- FH ● FIRE HYDRANT
- SSCO ○ SANITARY CLEAN OUT
- LP ⊙ LIGHT POLE
- EB □ ELECTRIC BOX
- PP ⊙ POWER POLE
- TPED □ TELEPHONE PEDESTAL
- x-x- FENCE
- TS ⊕ TRAFFIC SIGN
- EX OHE- OVERHEAD ELECTRIC
- EX UGE- UNDERGROUND ELECTRIC
- EX GAS- GAS LINE
- EX F/O- FIBER OPTIC LINE
- EX TEL- TELEPHONE LINE
- /// ASPHALT PAVEMENT
- EX 6"SS- SAN. SEWER
- EX 6"W- WATER
- EX FIRE- FIRE PROTECTION
- 36"SD- STORM SEWER
- IRR48— PROPOSED IRRIGATION PIPELINE



CITY OF  
McALLEN

©2014  
TEXAS DEPARTMENT OF TRANSPORTATION

FERRIS, FLINN & MEDINA, LLC  
ENGINEERS SURVEYORS  
1405 N. STUART PLACE ROAD  
HARLINGEN, TEXAS 79532  
PHONE (361) 364-1234 FAX (361) 364-1235  
TEAS BOARD OF PROFESSIONAL LAND SURVEYORS TEAS BOARD OF PROFESSIONAL ENGINEERS  
FIRM REGISTRATION NO. 10000000 FIRM REGISTRATION NO. 10000000

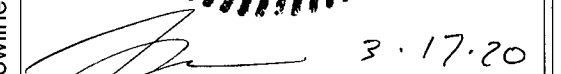
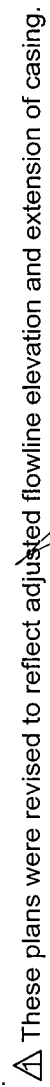
BICENTENNIAL BLVD.  
HCVID NO. 3  
PROPOSED IRRIGATION PIPELINE  
PLAN & PROFILE  
STA. 49+00 - STA. 56+00

SCALE: 1" = 60'				SHEET 11 OF 16	
DN:		CONT	SECT	JOB	HIGHWAY
CK DN:		921	02	352	CS
DW:		DIST	COUNTY		SHEET NO.
CK DW:		PHR	HIDALGO		
TR:					
CK TR:					

These plans were revised to reflect adjusted flowline elevation and extension of casing.



—IRR48— PROPOSED IRRIGATION PIPELINE

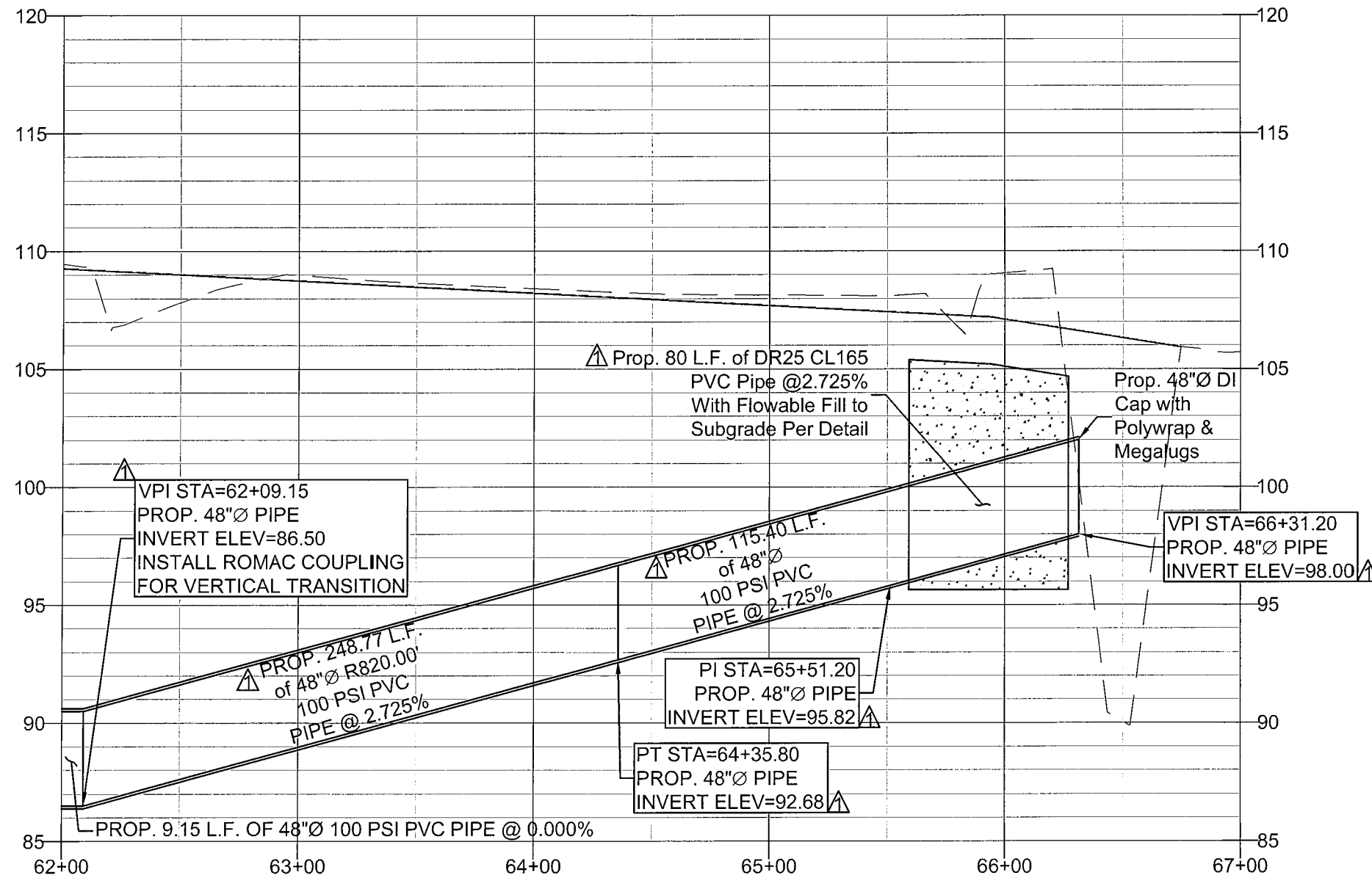
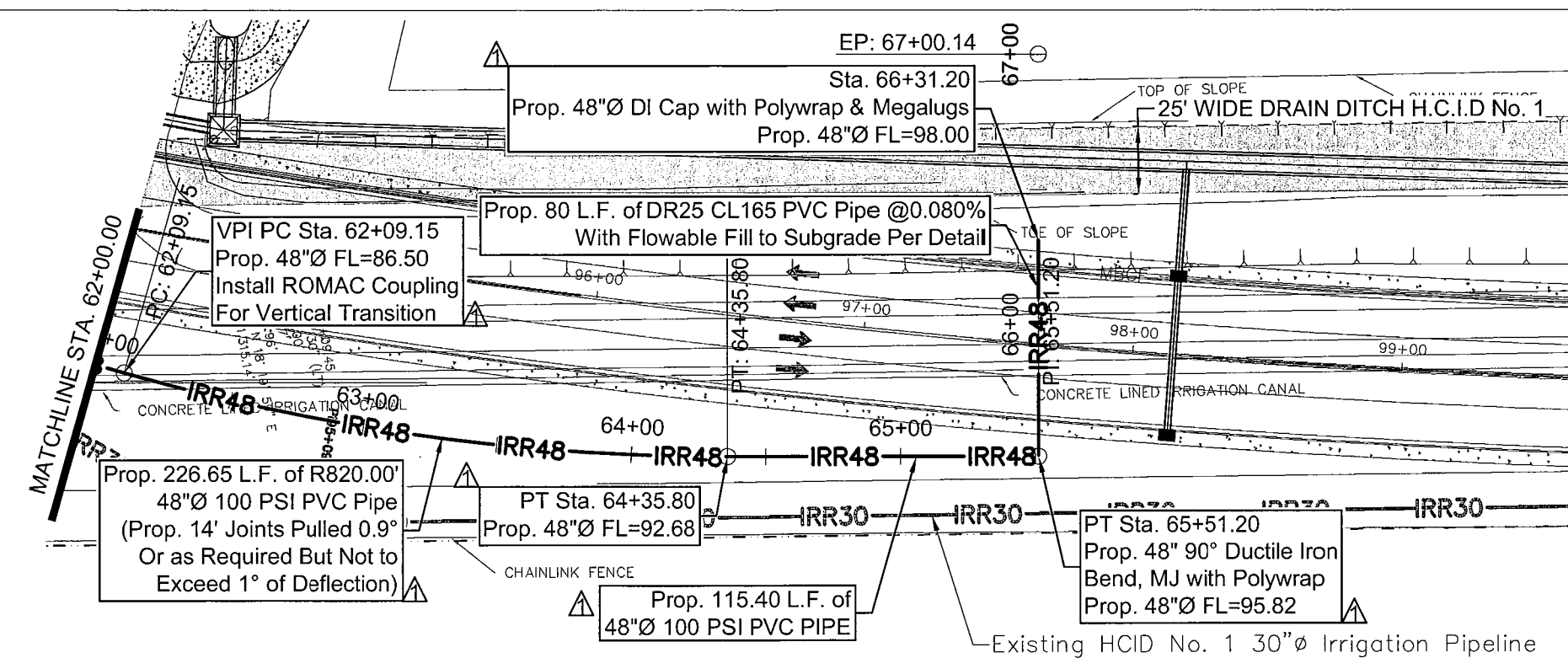


HARLINGEN, TEXAS 78552  
Phone (956) 364-2236 Fax (956) 364-1023  
TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS FIRM REGISTRATION NO. 100310/00  
TEXAS BOARD OF PROFESSIONAL ENGINEERS FIRM REGISTRATION NO. F-801

SCALE: 1" = 60' SHEET 12 OF 16

DN:	CONT	SECT	JOB	HIGHWAY
CK DN:	921	02	352	CS
DW:				
CK DW:	DIST	COUNTY		SHEET NO.
TR:	PHR	HIDALGO		
CK TR:				

F:\0142 HCID No. 3142-040 Canal Survey North of Trenton(Dwg)\142-040 McAllen Data with Surface.dwg, Bicentennial P&S Sheets, 3/17/2020 5:55:19 PM



FIELD VERIFY LOCATION AND ELEVATION OF ALL EXISTING UTILITIES.

# LEGEND

- CI □ INLET
- GI □ GRATE INLET
- MH ○ MANHOLE
- WVO □ GATE VALVE & BOX
- WM ⊕ WATER METER
- FH ● FIRE HYDRANT
- SSCO ○ SANITARY CLEAN OUT
- LP ○ LIGHT POLE
- EB □ ELECTRIC BOX
- PP □ POWER POLE
- TPED □ TELEPHONE PEDESTAL
- x-x- FENCE
- TS □ TRAFFIC SIGN
- EX OHE- OVERHEAD ELECTRIC
- EX UGE- UNDERGROUND ELECTRIC
- EX GAS- GAS LINE
- EX F/O- FIBER OPTIC LINE
- EX TEL- TELEPHONE LINE
- /// ASPHALT PAVEMENT
- EX 6"SS- SAN. SEWER
- EX 6"W- WATER
- EX FIRE- FIRE PROTECTION
- 36"SD- STORM SEWER
- IRR48 PROPOSED IRRIGATION PIPELINE



CITY OF  
McALLEN



TEXAS DEPARTMENT OF TRANSPORTATION

FERRIS, FLINN & MEDINA, LLC  
ENGINEERS SURVEYORS  
1405 N. STUART PLACE ROAD  
HARLINGEN, TEXAS 79522

TELEPHONE (361) 354-2226 FAX (361) 354-1023  
FIRM REGISTRATION NO. 0003502 TEXAS BOARD OF PROFESSIONAL ENGINEERS  
FIRM REGISTRATION NO. F891 TEXAS BOARD OF PROFESSIONAL SURVEYORS

BICENTENNIAL BLVD.  
HCID NO. 3  
PROPOSED IRRIGATION PIPELINE  
PLAN & PROFILE  
STA. 62+00.00 - STA. 67+00

SCALE: 1" = 60'

SHEET 12A OF 16

DN:	CONT	SECT	JOB	HIGHWAY
CK DN:	921	02	352	CS
OW:				
CK OW:				
TR:				
CK TR:	PHR		HIDALGO	

These plans were revised to reflect adjusted flowline elevation and extension of casing.

---

## EXHIBIT 1

---

CAUSE NO. **CCD-0517-D**

HIDALGO COUNTY WATER	§	EMINENT DOMAIN PROCEEDING
IMPROVEMENT DISTRICT NO. 3	§	
Condemnor,	§	
	§	IN THE COUNTY COURT AT LAW NO. ____
V.	§	
	§	
HIDALGO COUNTY IRRIGATION	§	HIDALGO COUNTY, TEXAS
DISTRICT NO. 1	§	
Condemnee.	§	

CONDEMNOR'S ORIGINAL  
PETITION FOR CONDEMNATION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now Hidalgo County Water Improvement District No. 3 (hereinafter referred to as "Condemnor"), a Water Control and Improvement District with eminent domain authority, and files this Original Petition for Condemnation, seeking easement rights from Hidalgo County Irrigation District No. 1 (hereinafter referred to as "Condemnee") , and respectfully shows the Court as follows:

Discovery

1. If and when this proceeding becomes a judicial proceeding, discovery shall be conducted under Rule 190.4 (Level 3) of the Texas Rules of Civil Procedure. Condemnor seeks monetary relief of \$100,000 or less and non-monetary relief. The damages and relief sought are within the jurisdictional limits of the Court. Because this proceeding arises under Chapter 21 of the Texas Property Code, Texas Rule of Civil Procedure 169 regarding the expedited actions process does not apply to this suit. TEX. R. CIV. P. 169(a)(2).

**CCD-0517-D**  
Jurisdiction and Venue

2. Venue is proper in this County pursuant to Section 21.013 of the Texas Property Code.

Parties

3. Condemnor is a duly created Water Control and Improvement District, having been converted from a Water Improvement District in 1926, and having all powers, rights, privileges and functions conferred by general law upon any district created pursuant to Article 16, Section 59, of the Constitution of the State of Texas, and those specific powers enumerated in Chapter 49 and Chapter 51 of the Texas Water Code. Condemnor has the rights and powers, among others, to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside Condemnor's boundaries any and all land, works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of Condemnor or purposes authorized by law. In accordance with Section 49.222 of the Texas Water Code, Condemnor has the right to acquire by condemnation any and all property necessary or convenient to the exercise of its powers, rights, privileges, and functions conferred upon it. Condemnor's principal office and place of business is in Hidalgo County, Texas.

4. Condemnor is informed and believes, and so alleges, that the following Condemnee holds or claims some interest in or title to the property described herein, and may be served with citation and/or notice as follows:

- a. Hidalgo County Irrigation District No. 1, c/o Rusty McDaniel, General Manager, 1904 N. Expressway 281, Edinburg, Texas, 78542.

Condemnor reserves the right to add the names of any such additional landowners, lienholders, easement holders, or claimants, whose interest may subsequently appear and to condemn the interest of each of such other parties as may subsequently appear for the purposes stated herein.

**CCD-0517-D**

Landowner Bill of Rights

5. Condemnor brings this action pursuant to the pertinent provisions of Section 21.001 through 21.065, both inclusive, of the Texas Property Code, as amended. Condemnor has provided the property owner with the bill of rights statement in accordance with Section 21.0112.

Public Use and Necessity for Condemnation

6. Pursuant to the powers and duties granted to and imposed upon it, Condemnor, by a resolution of its Board of Director (the “Resolution”), has determined that there exists a public necessity for, and has determined that it is necessary to acquire by condemnation or otherwise, subsurface easement rights in and under property owned by Condemnee, as described and more particularly set out below. In order (i) to provide continuous and adequate retail water service to customers within the boundaries of Condemnor, as well as the sale of surplus water to customers, including other districts, outside the boundaries and in the vicinity of the District and (ii) to pump and deliver irrigation water to other districts in the vicinity, a public necessity exists for the acquisition of subsurface easement rights in and under Condemnee’s property in order to accomplish the public purpose of constructing, operating, and maintaining a new public water pipeline and any necessary related appurtenances and improvements. This is the public use for which Condemnor intends to acquire the easement rights described in this petition.

Property Rights Sought

7. Condemnor seeks and condemns for a ten foot wide (10’) exclusive and perpetual subsurface easement for the purpose of installing, constructing, maintaining, operating, repairing, rebuilding, relocating, upgrading, replacing, removing and abandoning one pipeline of a nominal forty-eight inch (48”) diameter encased in a nominal sixty-six inch (66”) diameter steel casing, along with any necessary appurtenances thereto (the “Pipeline Facilities”), for the purposes of

**CCD-0517-D**

transporting raw water in and under a portion of land owned by Condemnee, more particularly described and depicted in the attached Exhibit "A" (referred to herein as the "Easement Tract").

8. Condemnor shall install the Pipeline Facilities via bore from adjacent lands and is not seeking to acquire any rights to access the surface of the Easement Tract. The Pipeline Facilities shall be installed at a depth of at least five feet (5') below the bottom of the double seventy-two inch (72") siphons located in the Easement Tract. The foregoing notwithstanding, Condemnor shall have the right to select the exact location of the Pipeline Facilities within the Easement Tract.

Rights Retained by Condemnee

9. Condemnee shall retain the right to use the Easement Tract for any and all purposes not inconsistent with the rights being acquired by Condemnor herein. All oil, gas, and other minerals and water rights owned by Condemnee in, on, and under the Easement Tract shall be reserved to Condemnee; provided, however, Condemnee shall not be permitted to drill or excavate for oil, gas, other minerals, or water on the surface of the Easement Tract, but Condemnee may extract oil, gas, other minerals, or water from and under the Easement Tract by directional drilling or other means which do not interfere with or disturb Condemnor's use of the Easement Tract.

Bona Fide Offer

10. Condemnor, acting by and through its duly authorized agents, has made a bona fide offer to voluntarily acquire by purchase, and has offered to pay such reasonable damages, if any, as might result from the acquisition and use of, the easement rights described herein. Condemnor's bona fide offer comported in all respects with Section 21.0113 of the Texas Property Code.

11. Condemnor has been unable to agree with the Condemnee upon the value of the easement rights sought in this condemnation action and the damages, if any, to the remainder of



**CCD-0517-D**

Condemnee's property. Accordingly, it has become necessary to institute this proceeding. All conditions precedent to instituting this condemnation proceeding have occurred or have been performed.

Texas Property Code Disclosure

12. Pursuant to TEX. PROP. CODE § 21.023, the Condemnee or the Condemnee's heirs, successors, or assigns may be entitled to:

- a. repurchase the property under Subchapter E of Chapter 21 of the Texas Property Code; or
- b. request from Condemnor certain information relating to the use of the acquired property and any actual progress made toward that use; and
- c. the repurchase price is the price paid to Condemnee by Condemnor at the time Condemnor acquired the property through eminent domain.

WHEREFORE, Condemnor prays that the Court forthwith appoint three (3) disinterested real property owners who reside in this County as Special Commissioners as required by law; appoint two alternate Special Commissioners; provide the parties with fourteen (14) days from signing the Order of Appointment to strike a commissioner pursuant to section 21.014 of the Texas Property Code; upon the appointment of the Commissioners and their acceptance thereof and qualification according to law, that the Commissioners promptly set a time and place for hearing in accordance with the law and that notice in writing of the time and place selected for the hearing be issued by the Commissioners to each of the parties hereto; upon the issuance and service of such notice, a hearing be held in accordance therewith and upon such hearing that the Commissioners assess the actual damages, if any, that will be sustained by Condemnee by the aforesaid condemnation and thereafter reduce their decision to writing, assessing the damages, if any, and costs according to law, and that they date and sign their decision and file it with the Court; that thereafter a Judgment of Condemnation be entered by the Court vesting in

**CCD-0517-D**

Condemnor the easement rights as described and set forth above; Condemnor further prays that upon payment into the Registry of this Court of the amount awarded Condemnee by the Special Commissioners, Condemnor have a Writ of Possession issued in its behalf and such other process necessary to enforce the decision of the Special Commissioners and Judgment of Condemnation; and Condemnor be granted costs of suit and such other and further relief, general and special, at law or in equity, as to which it may be justly entitled.

Respectfully submitted,

JACKSON WALKER L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
512-236-2000  
Fax No. 512-236-2002  
Email - banderson@jw.com



---

W. Brad Anderson – State Bar No. 24055106

Law Office of Randolph Kimble Whittington  
2014 East Harrison Avenue  
Harlingen, Texas 78550  
(956) 423-7200  
Fax (956) 423-7999  
email - chagofuentes@rkwlaw.com

Randolph K. Whittington – State Bar No.  
21404500

ATTORNEYS FOR HIDALGO COUNTY  
WATER IMPROVEMENT DISTRICT NO. 3

**CCD-0517-D**

**CERTIFICATE OF SERVICE**

This is to certify that on the 14<sup>th</sup> day of November, 2019, a true and correct copy of the foregoing has been forwarded via certified mail, return receipt requested to:

***Via Certified Mail Return Receipt Requested***

Mr. Rusty McDaniel  
General Manager  
Hidalgo County Irrigation District No. 1  
1904 N. Expressway 281  
Edinburg, Texas 78542

***Via Certified Mail, Return Receipt Requested  
and E-service***

A. Kirby Cavin  
Atlas Hall & Rodriquez, LLP  
818 Pecan  
McAllen, Texas 78501  
akcavin@atlashall.com



---

Brad Anderson

**CCD-0517-D**

# **EXHIBIT A**

**FERRIS, FLINN & MEDINA, LLC**

CCD-0517-D

**E N G I N E E R S     S U R V E Y O R S**

Revised  
21 October 2019

**METES AND BOUNDS  
0.05 ACRE TRACT OUT OF  
HIDALGO COUNTY IRRIGATION DISTRICT NO. 1 RIGHT OF WAY**

Being a 0.05 Acre Tract out of Hidalgo County Irrigation District No. 1 Right of way out of Lot 9 and Lot 12, Block 278, Texas Mexican Railway Company Survey, recorded in Volume 24, Pages 170-171, Deed Records of Hidalgo County, Texas; said 0.05 Acre Tract being more particularly described as follows:

**COMMENCING** at the Northeast corner of Lot 60, La Floresta Subdivision Phase 1, recorded in Volume 55, page 170, Map Records of Hidalgo County, Texas and being on a curve to the left, for an angle point; (Having Coordinate values of X = 1075482.8186 Y = 16631372.6748 of the Texas State Plane Coordinate System, South Zone, NAD 83)

**THENCE** along said curve to the left having a radial bearing of North 73 Deg. 55 Min. 31 Sec. West, a Radius of 1000.00 Feet, having an Arc Length of 60.49 Feet, a delta angle of 03 Deg. 27 Min. 57 Sec., with a Chord bearing of North 14 Deg. 20 Min. 30 Sec. East and a Chord Distance of 60.48 Feet to a point on the South right of way of Hidalgo County Irrigation District No. 1;

**THENCE** along the South Right of way of Hidalgo County Drainage District No. 1, South 62 Deg. 04 Min. 10 Sec. East a distance of 96.37 Feet to a 1/2 inch iron rod with plastic cap stamped MEDINA 5719 set, for the Southwest corner and **POINT OF BEGINNING** of the centerline herein described; (Having coordinate values of X = 1075582.9442 Y = 16631386.1329 based on the Texas State Plane Coordinate System, South Zone, NAD83);

1) **THENCE** leaving the South Right of way of Hidalgo County Irrigation District No. 1, **North 25 Deg. 32 Min. 06 Sec. East** a distance of **198.39 Feet** to a 1/2 inch iron rod with plastic cap stamped MEDINA 5719 set on the North Right of way of Hidalgo County Drainage District No. 1, for the Northwest corner of the tract herein described;

2) **THENCE** along the North Right of way of Hidalgo County Irrigation District No. 1, **South 56 Deg. 59 Min. 52 Sec. East** a distance of **10.09 Feet** to a 1/2 inch iron rod with plastic cap stamped MEDINA 5719 set, for the Northeast corner the tract herein described;

3) **THENCE** leaving the North Right of way of Hidalgo County Irrigation District No. 1, **South 25 Deg. 32 Min. 06 Sec. West** a distance of **161.16 Feet** to the point on the South Right of way of Hidalgo County Irrigation District No. 1 and being the North boundary of Lot 16A and 17A, Timberhill Villa No. 4, recorded in Volume 27, Page 146A, Map Records of Hidalgo County, Texas, for a corner of the tract herein described;

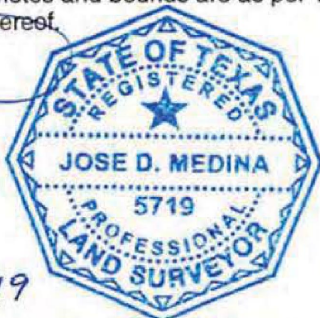
4) **THENCE** along the South Right of way of Hidalgo County Irrigation District No. 1 and along the North boundary of Timberhill No. 4, **North 56 Deg. 58 Min. 52 Sec. West** a distance of **1.01 Feet** to a 1/2 inch iron rod found for the Northwest corner of said Lot 16A and 17A, Timberhill Villa No. 4 and a corner of the tract herein described;

5) **THENCE** along the West boundary of Lot 16A and 17A, Timberhill Villa No. 4, **South 08 Deg. 47 Min. 38 Sec. West** a distance of **3.47 Feet** to a point, for a corner of the tract herein described;

6) **THENCE** along the South Right of way of Hidalgo County Irrigation District No. 1, **North 62 Deg. 04 Min. 10 Sec. West** a distance of **10.01 Feet** the **POINT OF BEGINNING**; Containing 0.05 Acre within these metes and bounds.

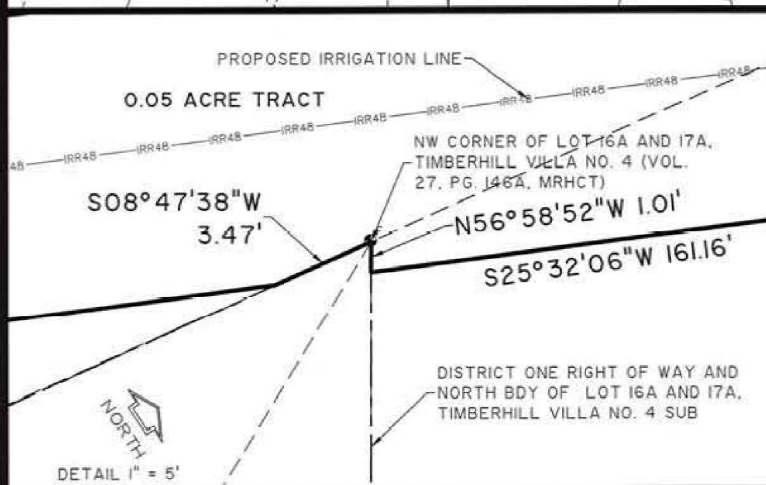
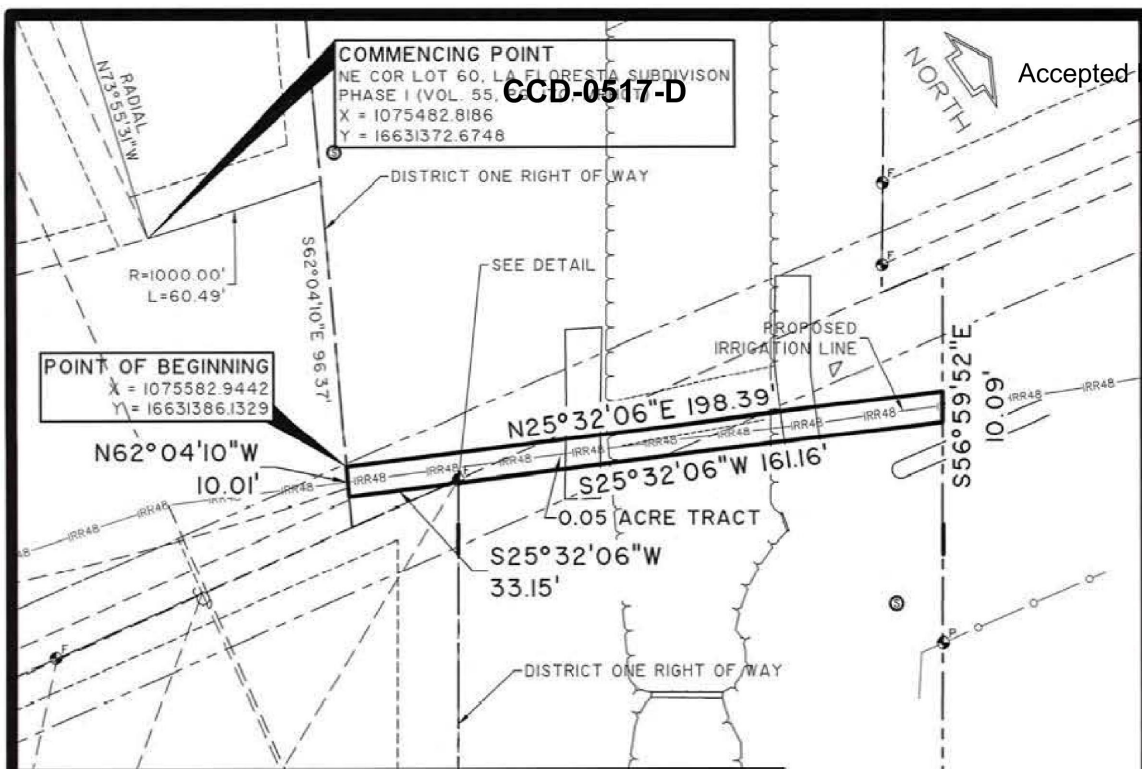
Basis of bearings on this metes and bounds are as per Texas Sate Plane Coordinate System, South Zone, NAD 83. All dimensions are in feet and decimals thereof.

Jose D. Medina, R.P.L.S.  
Registered Professional  
Land Surveyor No. 5719



*21 October 2019*  
Date





#### GENERAL NOTES

1. BASIS OF BEARINGS AS PER THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD 83.
2. THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A COMMITMENT FOR TITLE INSURANCE AND MAY BE SUBJECT TO EASEMENT AND RESERVATIONS NOT REFLECTED THEREON.

#### SURVEYOR CERTIFICATE

I, JOSE D. MEDINA, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF TEXAS, HEREBY CERTIFY THAT THIS DRAWING WAS PREPARED FROM AN ON THE GROUND SURVEY PERFORMED BY ME OR BY MEN UNDER MY SUPERVISION. THIS SURVEY CONFORMS TO THE MINIMUM STANDARDS OF PRACTICE PROMULGATED BY THE TEXAS BOARD OF PROFESSIONAL LAND SURVEYORS.

JOSE D. MEDINA, R.P.L.S.  
REGISTERED PROFESSIONAL  
LAND SURVEYOR NO. 5719

21 October 2019  
DATE



#### BOUNDARY SURVEY OF:

BEING A 0.05 ACRE TRACT OUT OF HIDALGO COUNTY IRRIGATION DISTRICT NO. 1 RIGHT OF WAY OUT OF LOT 9 AND LOT 12, BLOCK 278, TEXAS MEXICAN RAILWAY COMPANY SURVEY, RECORDED IN VOLUME 24, PAGES 170-171, DEED RECORDS OF HIDALGO COUNTY, TEXAS

REVISED 21 OCTOBER 2019: CORRECTED BLOCK NAME

FOR: HIDALGO COUNTY IRRIGATION DISTRICT NO. 3

**FERRIS, FLINN & MEDINA, LLC**

**ENGINEERS SURVEYORS**

1405 N. STUART PLACE ROAD

PALM VALLEY, TEXAS 78552

PHONE (956) 364-2236 FAX (956) 364-1023

TEXAS BOARD OF PROFESSIONAL LAND SURVEYING  
FIRM REGISTRATION NO. 100370-00

TEXAS BOARD OF PROFESSIONAL ENGINEERS  
FIRM REGISTRATION NO. F-697

1" = 50' DRAWN BY: JDM 13 SEPTEMBER 2019 JOB NO: 142-040

CREW: MIGUEL GUTIERREZ

LATITUDE: 26° 17' 30.1" LONGITUDE: 98° 13' 16.4"



Scale: 1" = 50'

---

## EXHIBIT 2

---

CAUSE NO. CCD-0517-D

HIDALGO COUNTY WATER  
IMPROVEMENT DISTRICT NO. 3

Condemnor,

V.

HIDALGO COUNTY IRRIGATION  
DISTRICT NO. 1

Condemnee.

§ EMINENT DOMAIN PROCEEDING  
§  
§  
§ IN THE COUNTY COURT AT LAW NO. 4  
§  
§  
§ HIDALGO COUNTY, TEXAS  
§  
§

**WAIVER AND ACCEPTANCE OF SERVICE**  
**OF NOTICE OF HEARING**

Pursuant to Rule 119 of the Texas Rules of Civil Procedure, Condemnee Hidalgo County Irrigation District No. 1, acting by and through their duly authorized attorney Daniel G. Gurwitz, hereby waive issuance and service of Condemnor's Notice of Hearing for the February 12, 2020 Special Commissioners' hearing to begin at 9:30 a.m. at the Casa De Palmas, Board Room, 101 N. Main St., McAllen, Texas 78501. This acceptance of service shall have the same force and effect as if citation had been issued and served as provided by law. A copy of Condemnor's Notice of Hearing for February 12, 2020 in the above-referenced cause has been delivered to and received by Daniel G. Gurwitz on behalf of Hidalgo County Irrigation District No. 1.

By: \_\_\_\_\_

Daniel G. Gurwitz  
Atlas Hall & Rodriguez, LLP  
818 Pecan  
McAllen, Texas 78501  
dgurwitz@atlashall.com  
(956) 632-8239

ATTORNEY FOR CONDEMNEE  
HIDALGO COUNTY IRRIGATION  
DISTRICT NO. 1



THE STATE OF TEXAS

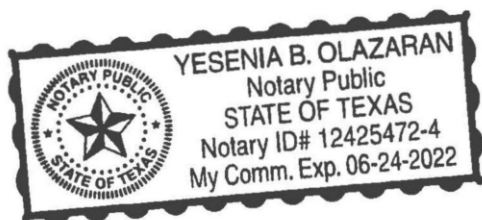
§  
§  
§  
§

COUNTY OF Hidalgo

BEFORE ME, the undersigned, a Notary Public, in and for said county and state, on this day personally appeared Daniel G. Gurwitz, on behalf of Hidalgo County Irrigation District No. 1, who being by me duly sworn on his oath deposed and said that he is duly qualified and authorized in all respects to make this affidavit; that he has read this Waiver and Acceptance of Service of Notice of Hearing, and that every statement contained herein is within his knowledge and true and correct.

SUBSCRIBED AND SWORN to before me on the 20<sup>th</sup> day of January, 2020, to certify which witness my hand and official seal.

Yesenia B. Olazarán  
Notary Public – State of Texas



---

## EXHIBIT 3

---

**CAUSE NO. CCD-0517-D**

HIDALGO COUNTY WATER	§	EMINENT DOMAIN PROCEEDING
IMPROVEMENT DISTRICT NO. 3	§	
Condemnor,	§	
V.	§	IN THE COUNTY COURT AT LAW NO. 4
HIDALGO COUNTY IRRIGATION	§	
DISTRICT NO. 1	§	
Condemnee.	§	HIDALGO COUNTY, TEXAS

**CONDEMNEE’S REPLY TO CONDEMNOR’S RESPONSE TO  
CONDEMNEE’S PLEA TO THE JURISDICTON**

TO THE HONORABLE JUDGE OF SAID COURT:

Hidalgo County Irrigation District No. 1 (“HCID 1”) files this reply to Hidalgo County Water Improvement District No. 3’s (“HCWID 3”) Response to Hidalgo County Irrigation District No. 1’s Plea to the Jurisdiction and in support thereof would respectfully show as follows:

**1. SUMMARY OF THE ARGUMENT**

The Legislature has not waived immunity for HCID 1. In order for HCID No. 1 to be sued for any reason, including condemnation, the Legislature must have unambiguously waived immunity on behalf of HCID 1. Unambiguous means “susceptible of but one meaning” and not open to interpretation.<sup>1</sup> The Texas Supreme Court, in a case HCID 1 relies on and which specifically involves the Water Code, held that a water district condemnee *may* challenge immunity from suit.<sup>2</sup> It did not find in that case that immunity is waived in condemnation proceedings, though it had the opportunity to do so.<sup>3</sup> Yet, HCWID 3 claims that *City of Conroe v. San Jacinto River Authority*, a case that did not involve the Water Code, did not involve a water

---

<sup>1</sup>*Tex. Dept. of Human Servs. v. Green*, 855 S.W.2d 136, 141 (Tex. App.—Austin 1993) (quoting *Lawrie v. Miller*, 45 S.W.2d 172, 173 (Tex. Comm’n App. 1932, holding approved)); *See Fort Worth Transp. Auth. v. Rodriguez*, 547 S.W.3d 830, 838 (Tex. 2018).

<sup>2</sup>*In re Lazy W Dist. No. 1*, 493 S.W.3d 538 (Tex. 2016).

<sup>3</sup>*Id.* at 544.

district, and was not a condemnation suit, is a statement by the Texas Supreme Court that the Legislature unambiguously waived immunity from suit in condemnation proceedings involving water districts. The actual holding in *City of Conroe v. San Jacinto River Authority* is rather limited: immunity does not bar an Expedited Uniform Declaratory Judgments Act (“EDJA”) suit, which is brought *in rem*, because suits brought under the EDJA do not implicate the public policy reasons for applying governmental immunity.<sup>4</sup> The Court did not even hold as a matter of law that immunity does not apply to all *in rem* proceedings, much less to water districts condemning public land under the Water Code. Governmental immunity applies in this case, and for that reason, the Court should grant HCID 1’s Plea to the Jurisdiction.

Counsel for HCWID 3 said it best: “They [the Legislature] can say it however they want to say it.” *See* Reporter’s Record, 38:7–8. That is exactly HCID 1’s point. In drafting statutes, the Legislature includes and omits each chosen word for a purpose. The Legislature chose what it wanted to say in Section 49.222 of the Texas Water Code, and it chose not to include the phrase “public or private land” in granting the power of eminent domain, even though it used those same words in other sections of the Water Code. Section 49.222 does not contain a clear and unambiguous waiver of immunity, and the Water Code does not clearly confer the right to condemn public lands. Because there has not been a clear waiver of immunity, HCID 1 is immune from suit in this case and the Court should grant its Plea to the Jurisdiction.

## **2. ARGUMENT & ANALYSIS**

### **A. The Supreme Court has never decided whether or not immunity is waived in a condemnation proceeding under the Texas Water Code.**

HCWID 3 argues that the *San Jacinto River Authority* case held that immunity can never apply in any *in rem* proceedings. This is a gross overstatement of the actual holding of that case.

---

<sup>4</sup>2020 Tex. LEXIS 253 at \*2, \*25, No. 18-0989 (Tex. Mar. 27, 2020).

The Court’s actual holding was that “the cities’ governmental immunity does not bar an EDJA suit, which is brought *in rem* to adjudicate interests in property.”<sup>5</sup>

In analyzing the application of immunity in EDJA suits, the Court held that suits brought under the EDJA do not implicate the policies underpinning immunity jurisprudence.<sup>6</sup> In its analysis, the Court noted that EDJA suits pose little risk to the public treasury because although they were interested parties under the statute, the cities in that case were not required to expend financial resources to defend EDJA litigation, but rather may choose to do so.<sup>7</sup> That is not the situation in this condemnation proceeding. Rather, as HCWID 3 pointed out—and actually used as an argument in favor of the waiver of immunity—HCID 1 is a required, necessary party to this litigation (according to HCWID 3).<sup>8</sup> HCID 1 has been required to expend financial resources to defend against this condemnation proceeding; it did not voluntarily intervene in this litigation.<sup>9</sup>

The holding in *San Jacinto River Authority* pertains to the propriety of immunity in an EDJA suit, not to the propriety of immunity in all *in rem* proceedings. The Supreme Court of Texas has recognized that it has not yet opined on whether or not immunity applies in condemnation suits, and it didn’t do so in *San Jacinto River Authority*.<sup>10</sup> The Supreme Court has had the opportunity on at least two occasions to decide whether immunity is waived in condemnation proceedings, yet it has declined to do so and, in fact, has allowed the governmental entity to proceed with its immunity argument.<sup>11</sup> HCWID 3’s argument that *San Jacinto River*

---

<sup>5</sup>*City of Conroe v. San Jacinto River Auth.*, No. 18-0989, 2020 Tex. LEXIS 253 at \*2 (Tex. Jan. 9, 2020).

<sup>6</sup>*City of Conroe*, No. 18-0989, 2020 Tex. LEXIS 253 at \*25.

<sup>7</sup>*Id.* at \*25–26.

<sup>8</sup>*See* Condemnor’s Response to Plea to the Jurisdiction, n. 41.

<sup>9</sup>Interestingly, while HCWID 3 admitted that it is statutorily obligated to pay for the costs related to any relocation of HCID 1’s infrastructure, it refused to admit that HCWID 3 is obligated under the Water Code to indemnify HCID 1 for any damages or that HCWID 3 would not assert its own immunity in order to avoid liability for said damages.

<sup>10</sup>*In re Lazy W Dist. No. 1*, 493 S.W.3d 538, 544 (Tex. 2016) (recognizing that it has “never decided whether a governmental entity is immune from suit to condemn its property.”).

<sup>11</sup>*See id.*; *see also Onco Elec. Delivery Co. v. Dallas Area Rapid Transit*, 369 S.W.3d 845, 849 (Tex. 2012) (“We assume, without deciding, that governmental entities are immune from condemnation suits.”)

*Authority* prevents immunity from applying in the case at bar is inaccurate. The public policy reasons discussed above support finding that HCID 1 is immune from this condemnation proceeding, and the Court should grant the Plea to the Jurisdiction.

**B. The Water Code Does Not Contain A Clear, Unambiguous Waiver of Immunity.**

HCWID 3 argues that if governmental immunity does apply in this case, which HCID 1 asserts that it does, then immunity has been waived by the word “any” found in Chapter 49 of the Water Code.<sup>12</sup> A waiver of immunity must be expressed in “clear and unambiguous language.”<sup>13</sup> As a result, statutory waivers of immunity are narrowly interpreted.<sup>14</sup>

HCWID 3 contends that in condemnation proceedings, courts “have repeatedly held that immunity has been waived when the law allows for the use of eminent domain to acquire public property.”<sup>15</sup> Importantly, the two cases HCWID 3 cites in support of its position both interpret statutes that contain language extending the power of eminent domain expressly to public and private land.<sup>16</sup> The Water Code contains no such express language with respect to eminent domain.<sup>17</sup>

The Texas Supreme Court has found that phrases such as “sue and be sued” and “plead and be impleaded” do not waive immunity and, standing alone, “are if anything, unclear and

---

<sup>12</sup>See Condemnor’s Response to Plea to the Jurisdiction, § B.

<sup>13</sup>*City of New Braunfels v. Carowest Land, Ltd.*, 432 S.W.3d 501, 512–13 (Tex. App.—Austin 2014, no pet).

<sup>14</sup>*Univ. of Tex. Health Sci. Ctr. v. Webber-Eells*, 327 S.W.3d 233,

<sup>15</sup>See Condemnor’s Response to Plea to the Jurisdiction, § B.

<sup>16</sup>Tex. Loc. Gov’t Code Ann. § 261.001(b)(“[t]he right of eminent domain conferred by this section extends to *public or private land*, but not to land used for cemetery purposes.”) (emphasis added); Tex. Transp. Code § 284.061(b)(“A county may acquire by eminent domain property to use in or useful for a project under this chapter); Tex. Transp. Code § 284.061(d) (“...a county has full easement and rights-of-way through, across, under, and over *any property owned by this state that are necessary or convenient...*” for a project under this chapter)(emphasis added); Tex. Transp. Code § 251.101 (“A county may exercise the power of eminent domain in a municipality...*in public or private real property....*”)(emphasis added); Tex. Utility Code Ann. § 37.053(d)(For transmission facilities ordered or approved by the commission under Chater 37 or 39, the rights extended to an electric corporation under Section 181.004 [power and right to condemn] include *all public land, except land owned by the state....*”) (emphasis added).

<sup>17</sup>Tex. Water Code § 49.222.

ambiguous.”<sup>18</sup> Despite the fact that the Court stated that the phrase “plead and be impleaded” “is a ten-word sentence that reveals nothing about an intent to waive immunity,”<sup>19</sup> HCWID 3 invites this Court to waive immunity based on three letters—“any”—that reveal even less about an intent to waive immunity.

**i. Section 49.222 of the Water Code Does Not Expressly Waive Immunity.**

HCWID 3 asserts that by using the term “any” in Section 49.222 of the Water Code, the Legislature has granted to it the power to condemn all public and private land, and therefore has waived immunity.<sup>20</sup>

In its Response, HCWID 3 states that *Burlington N. & Santa Fe Ry. Co. v. City of Houston* held that “the right to condemn ‘any land’ included the right to condemn public land.”<sup>21</sup> Again, HCWID 3 misstates the actual holding of the case. The court in that case held that the City’s immunity was waived by Local Government Code § 51.075, which states that a home-rule municipality such as the City “may plead and be impleaded in any court.”<sup>22</sup> The Court did not reach any conclusion as to whether or not the inclusion of “any land” in the railroad condemnation statute waived the City’s immunity. In fact, the court expressly stated that it “need not reach the City’s third cross-issue that the railroad condemnation statutes do not waive immunity since the City’s immunity [had] been waived on another basis.”<sup>23</sup> Moreover, the year after the court in *Burlington* issued its opinion, the Supreme Court of Texas held that the clause “plead and be

---

<sup>18</sup>*Tooke v. City of Mexia*, 197 S.W.3d 325, 342 (Tex. 2006).

<sup>19</sup>*Id.*

<sup>20</sup>*See* Condemnor’s Response to Plea to the Jurisdiction, § B.

<sup>21</sup>*See* Response to Plea to the Jurisdiction at 7.

<sup>22</sup>*Burlington Northern & Santa Fe Ry. V. City of Houston*, 171 S.W.3d 240 (Tex. App.—Houston [14th Dist.] 2005, no pet.); Tex. Loc. Gov’t Code Ann. § 51.075.

<sup>23</sup>*Burlington Northern & Santa Fe Ry. V. City of Houston*, 171 S.W.3d 240, 246 (Tex. App.—Houston [14th Dist.] 2005, no pet.). As an aside, a water district’s condemnation power arises solely from the Water Code; a railroad’s power to condemn originated in the Texas Constitution and was subsequently authorized by the Legislature in a statute that was repealed two years after the *Burlington* opinion. *Id.* at 249; *see also* Tex. Rev. Civ. Stat. Ann. arts. 6316, 6317, 6336 (Vernon 1929).

impleaded” does not, by itself, waive immunity.<sup>24</sup> HCWID 3’s reliance on *Burlington* is misplaced.

That the alleged waiver of immunity in this case is not unambiguous is supported by the great lengths to which HCWID 3 must go to attempt to make its point. That is, because “any” in its ordinary meaning means “all,” then “all land” must mean both public and private land, which then means that the Legislature has waived immunity in Section 49.222 of the Texas Water Code. While the words “immunity is waived” are not required, the waiver still must be expressed in “clear and unambiguous language.”<sup>25</sup> When a party must go through an attenuated vocabulary lesson to finally reach the conclusion that immunity is waived, the only thing that is clear and unambiguous is that the statute “reveals nothing about an intent to waive immunity.”<sup>26</sup>

HCWID 3 contends that “Irrigation District 1 invites this Court to ignore binding Texas Supreme Court authority and the Legislature’s clear intent by replacing the word ‘any’ with the word ‘private.’”<sup>27</sup> Apparently, the irony of its argument is lost on HCWID 3. HCID 1 is not proposing that the term “any” be replaced with the term “private;” rather, HCID 1 asserts that Section 49.222 cannot be read to include “public” because said word does not appear on its face.<sup>28</sup> It is HCWID 3 who is attempting to rewrite the statute to include words that the Legislature intentionally omitted. The Legislature’s purposeful choice to omit the phrase “public or private land” from Section 49.222 is made only clearer by evaluating other provisions of the Water Code.

## **ii. Chapter 49 of the Water Code Does Not Clearly Allow the Condemnation of**

---

<sup>24</sup>*Tooke v. City of Mexia*, 197 S.W.3d 325, 342 (Tex. 2006).

<sup>25</sup>*City of New Braunfels v. Carowest Land, Ltd.*, 432 S.W.3d 501, 512–13 (Tex. App.—Austin 2014, no pet).

<sup>26</sup>*Tooke v. City of Mexia*, 197 S.W.3d 325, 342 (Tex. 2006).

<sup>27</sup>*See* Condemnor’s Response to Plea to the Jurisdiction at 9.

<sup>28</sup>*See In re D.S.*, No. 18-0908, 2020 Tex. LEXIS 96 at \*5 (Tex. May 8, 2020) (“In construing a statute, we assume the Legislature chose statutory language with care, included each chosen word for a purpose, and purposefully omitted all other words.”); *See also Ferreira v. Butler*, 575 S.W.3d 331, 337 (Tex. 2019)(explaining that changing the meaning of a statute by adding words is a legislative, not judicial, function).



### **Public Lands.**

The waiver of immunity must be expressed in “clear and unambiguous language” and Section 49.222 cannot be evaluated in a vacuum.<sup>29</sup> Rather, to properly analyze the Legislature’s intent as to Section 49.222, we must look to the entire Water Code.<sup>30</sup> In looking at the entire Water Code, it is clear that “any land” does not mean “public or private land,” and at the very least there is ambiguity in determining the Legislature’s intent under Texas Water Code § 49.222. When construing a statute that purportedly waives immunity, courts generally resolve ambiguities by retaining immunity.<sup>31</sup>

In identifying the powers and duties of a district in Chapter 49 of the Water Code, the Legislature specifically included the phrase “public and private” or “public or private” in at least five provisions.<sup>32</sup> Moreover, in at least seven other sections of the Water Code outside of Chapter 49, the Legislature specifically identified that those respective sections apply to both public and private property.<sup>33</sup> Yet, the Legislature chose not to include “public and private” when given the choice to include that phrase in Section 49.222 regarding the power of eminent domain.

HCWID 3 states that “[p]erhaps no other section of Chapter 49 illustrates this point [that immunity has been waived] better than neighboring Section 49.223....”<sup>34</sup> Section 49.223 identifies that the district will bear the costs if, in exercising its power of eminent domain or “any other

---

<sup>29</sup>*City of New Braunfels v. Carowest Land, Ltd.*, 432 S.W.3d 501, 512–13 (Tex. App.—Austin 2014, no pet.).

<sup>30</sup>*Taylor v. Firemen’s & Policemen’s Civil Service Com.*, 616 S.W. 2d 187 (Tex. 1981) (“It is a rule of statutory construction that one must look to the entire Act in determining the legislature’s intent with respect to a specific provision.”).

<sup>31</sup>*Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692 (Tex. 2003).

<sup>32</sup>*See* Tex. Water Code §49.213 (district may contract with “any public or private entity”); *Id.* at § 49.218 (“all land, both public and private”); *Id.* at § 49.221(b) (“entitled to enter any public or private property”); *Id.* at § 49.227 (district has power to act jointly with any person or entity, “private or public” in performing powers and duties); *Id.* at § 49.229 (water district may accept grants and gifts from any board-approved source, including “any governmental entity, any private or public corporation...”).

<sup>33</sup>*See* Tex. Water Code §§ 26.014, 26.503, 27.071, 28.051, 29.034, 31.016, 32.151.

<sup>34</sup>*See* Condemnor’s Response to Plea to the Jurisdiction, at 10.

power,” it relocates “any road, bridge, highway, railroad, electric transmission line, telegraph, or telephone properties, facilities, or pipelines....”

In discussing this section of the Water Code, HCWID 3 argues that limiting Section 49.222 to only allow for the condemnation of private property would render Section 49.223 meaningless and unnecessary.<sup>35</sup> This is not true. Section 49.223 does not limit the obligation to indemnify for costs of relocation only to those costs incurred in the district’s exercise of eminent domain. Section 49.223 applies to costs of relocation incurred in the exercise of eminent domain, and also the “power of relocation or any other power....” Thus, reading Section 49.222 as it is clearly written—without the inclusion of “public or private land”—does not affect Section 49.223 at all, much less render it meaningless.

By analyzing the entire Water Code, it appears that the Legislature intentionally included the phrase “public or private” in certain sections and intentionally omitted that phrase from other sections.<sup>36</sup> At the very least, there is reason to doubt whether the Legislature intended to grant water districts the right to condemn public land, and unless there is a clear and unambiguous waiver of immunity, immunity must be retained.<sup>37</sup>

---

<sup>35</sup>See Condemnor’s Response to the Plea to the Jurisdiction, at 11.

<sup>36</sup>*In re D.S.*, No. 18-0908, 2020 Tex. LEXIS 96 at \*5 (Tex. May 8, 2020) (“In construing a statute, we assume the Legislature chose statutory language with care, included each chosen word for a purpose, and purposefully omitted all other words.”).

<sup>37</sup>*City of New Braunfels v. Carowest Land, Ltd.*, 432 S.W.3d 501, 512–13 (Tex. App.—Austin 2014, no pet); *Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692 (Tex. 2003).

### 3. PRAYER

WHEREFORE, PREMISES CONSIDERED, HIDALGO COUNTY IRRIGATION DISTRICT NO. 1, prays that the Court grant its Plea to the Jurisdiction, dismiss this lawsuit for lack of subject matter jurisdiction due to governmental immunity, and for such other relief in law or equity to which Condemnee may be justly entitled.

Respectfully submitted,  
ATLAS, HALL & RODRIGUEZ, LLP  
P.O. Box 3725 (78502-3725)  
818 W. Pecan Blvd.  
McAllen, Texas 78501  
Tel: (956) 682-5501  
Fax: (956) 686-6109

By: /s/ Daniel G. Gurwitz  
Daniel G. Gurwitz  
State Bar No. 00787608  
[dgurwitz@atlashall.com](mailto:dgurwitz@atlashall.com)  
Meredith D. Helle  
State Bar No. 24106188  
[mhelle@atlashall.com](mailto:mhelle@atlashall.com)  
Allison Boyle  
State Bar No. 24087107  
[aboyle@atlashall.com](mailto:aboyle@atlashall.com)

**COUNSEL FOR CONDEEMNEE,  
HIDALGO COUNTY IRRIGATION DISTRICT #1**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded in compliance with the Texas Rules of Civil Procedure on this the 30th day of July 2020 as follows:

W. Brad Anderson  
JACKSON WALKER L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
Tel: (512) 236-2000  
Fax: (512) 236-2002  
[banderson@jw.com](mailto:banderson@jw.com)

Randolph K. Whittington  
Law Office of Randolph Kimble Whittington  
2014 E. Harrison Ave.  
Harlingen, Texas 78550  
Tel: (956) 423-7200  
Fax: (956) 423-7999  
[chagofuentes@rkwlaw.com](mailto:chagofuentes@rkwlaw.com)

/s/ Daniel G. Gurwitz  
Daniel G. Gurwitz

---

## EXHIBIT 4

---

**From:** [Frank Weathered](#)

**Sent:** Monday, August 17, 2020 5:28:28 PM

**To:** [Aida.Ramirez@co.hidalgo.tx.us](mailto:Aida.Ramirez@co.hidalgo.tx.us)

**Cc:** [Ricardo.Lizcano@co.hidalgo.tx.us](mailto:Ricardo.Lizcano@co.hidalgo.tx.us); [dgurwitz@atlashall.com](mailto:dgurwitz@atlashall.com); [Randolph K. Whittington](#); [Brad Anderson](#) ([banderson@jw.com](mailto:banderson@jw.com)); [Mel](#)

**Subject:** Hidalgo County Water Improvement Dist. No. 3 v. Hidalgo County Irrigation Dist. No. 1; Cause No. CCD-0517-D

**Sensitivity:** Normal

**Attachments:**

[Notice of Stay and Emergency Motion.pdf](#); [Exhibit A to Emergency Motion.pdf](#); [Exhibit B to Emergency Motion.pdf](#); [Exhibit C to Emergency Motion.pdf](#); [Exhibit D to Emergency Motion.pdf](#); [Order on Emergency Motion.pdf](#); [Exhibit A to Order on Emergency Motion.pdf](#);

---

Dear Aida,

Together with Randy Whittington and Brad Anderson, I represent Hidalgo County Water Improvement Dist. No. 3 ("Water District 3") in the above entitled and numbered cause. This afternoon, my office eFiled the attached Notice and Emergency Motion, together with proposed Order. Gary Gurwitz, who represents Hidalgo County Irrigation Dist. No. 1, was served electronically.

My reason in writing is to inform the Court that, because the Emergency Motion presents the Court with a matter of some urgency, it might be that Judge Garza prefers reviewing the motion, along with any response filed by Mr. Gurwitz's office, and making a ruling on the written record without a hearing. My client does not object to that. However, we are also certainly open to an expedited hearing if Judge Garza feels he needs one to make a ruling.

Please let the parties know if the Court has any questions, comments or concerns.

At his request, I am copying Mr. Lizcano on this email. I am also copying opposing counsel, Mr. Gurwitz, and my co-counsel, Mr. Whittington and Mr. Anderson.

Thank you for the Court's attention in this matter.

Frank Weathered  
Attorney-at-Law  
PO Box 6935  
Corpus Christi, Texas 78466  
361-904-3157  
[frank@weatheredlaw.com](mailto:frank@weatheredlaw.com)  
Board Certified, Civil Appellate Law  
Texas Board of Legal Specialization

---

## EXHIBIT 5

---

**CAUSE NO. 0937-20-A**

HIDALGO COUNTY	§	IN THE DISTRICT COURT
IRRIGATION DISTRICT NO. ONE	§	
Plaintiff	§	
V.	§	92 <sup>ND</sup> JUDICIAL DISTRICT
	§	
CITY OF MCALLEN	§	
Defendant.	§	HIDALGO COUNTY, TEXAS

**PLAINTIFF'S FIRST AMENDED PETITION, APPLICATION FOR TEMPORARY  
RESTRAINING ORDER, AND APPLICATION FOR TEMPORARY INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Hidalgo County Irrigation District No. One, Plaintiff in the above-styled and numbered cause, and files this, its First Amended Original Petition, Application for Temporary Restraining Order, and Application for Temporary Injunction, complaining of the City of McAllen (the "Defendant") and in connection therewith would respectfully show unto the Court as follows:

**1. PARTIES**

1.1 Plaintiff is a duly created Water Irrigation District organized and operating under the laws of the State of Texas.

1.2 Defendant City of McAllen is a Texas home-rule city organized pursuant to the laws of the State of Texas. It already has appeared in this case.

**2. DISCOVERY CONTROL LEVEL**

Discovery in this case is intended to be conducted under Level 2 pursuant to Texas Rule of Civil Procedure 190.3.



### **3. JURISDICTION AND VENUE**

3.1 This Court has jurisdiction because the relief sought by Plaintiff is within the jurisdictional limits of this Court. Further, this Court has subject matter jurisdiction over Defendant as its immunity is waived pursuant to Section 271.152 of the Texas Local Government Code.

3.2 Venue is proper in Hidalgo County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code § 15.002(a)(1) because all or a substantial part of the events giving rise to the claim occurred in Hidalgo County, Texas.

3.3 Plaintiff seeks only non-monetary relief and damages of less than \$100,000 at this time.

### **4. FACTUAL BACKGROUND**

4.1 Plaintiff is a water irrigation district and maintains an open irrigation outtake canal just south of the intersection of Freddy Gonzalez Drive and the proposed Bicentennial Boulevard in McAllen, Texas (the “Canal”). Two 72” reinforced concrete pressure pipes (the “Pipes”), which sit on a gravel bed, run east and west below a proposed expansion of Bicentennial Boulevard connecting the Canal on each side of the proposed roadway. The Canal services numerous HCID NO. ONE customers. A majority of the drinking water supplied to the City of Edinburg flows through the Canal.

4.2 The City of McAllen planned two future roadway crossings at the Canal, and in connection therewith, sought the grant of a right of way from Plaintiff (“HCID No. One Right-of-Way”). In order to accommodate said roadway crossings, it was necessary to install irrigation siphon infrastructure. On or about March 15, 2017, Plaintiff and the City of McAllen entered into an Interlocal Cooperation Agreement (the “Agreement”) related to siphon crossings at the Canal. Pursuant to the Agreement, the City of McAllen agreed to provide all construction plans and to pay all construction-related costs associated with the siphon crossing. The City of McAllen also

installed below the Canal all of the water and sewer lines necessary for the expansion of utilities as part of the roadway expansion. Plaintiff entered into this Agreement because it would eliminate future disruption of its operations near the Canal, and in exchange for the City of McAllen's design and installation of the siphon infrastructure. In fact, the Agreement expressly states that the obligations and rights granted under the Agreement would "avoid[] future disruptions to [Plaintiff's] operations." *See* Ex. A to Plaintiff's Original Petition. In exchange, Plaintiff intended to allow the City of McAllen to access the HCID NO. ONE Right-of-Way as was necessary for its future roadway crossings. However, Plaintiff did not grant an easement, did not grant any other written license or written permit to access the HCID NO. ONE Right-of-Way, and expressly retained ownership of the HCID NO. ONE Right-of-Way.

4.3 On or about August 29, 2019, the City of McAllen entered into an Interlocal Cooperation Agreement with Hidalgo County Water Improvement District Number Three (hereinafter "HCWID 3 Agreement"). *See* Ex. B to Plaintiff's Original Petition. Hidalgo County Water Improvement District Number Three ("HCWID NO. 3") plans to extend its underground irrigation pipeline in and along Bicentennial Boulevard. Pursuant to the HCWID 3 Agreement, the City of McAllen granted HCWID NO. 3 an easement along Bicentennial Boulevard for its pipeline. *See id.*

4.4 The HCWID 3 Agreement expressly acknowledges that HCWID NO. 3's pipeline extension will encroach upon the Canal. *See id.* So, the City of McAllen knew when it entered into the HCWID 3 Agreement that it would be disrupting Plaintiff's operations.

4.5 The City of McAllen's actions are a material breach of the Agreement, and HCID NO. ONE is not required by law to explain how that breach damages HCID NO. ONE. Nevertheless, HCID NO. ONE provides the following helpful background.

4.5.1 HCWID NO. 3 intends to install a 48” pipe encased in a 66” steel casing at location STA. 59+50 to STA. 61+75 (the HCWID 3 Pipe), just feet below the existing Pipes. *See Exhibit C to Plaintiff’s Original Petition.* The HCWID 3 Pipe cannot be put into place without first boring and excavating the material that sits 2.3 feet below the existing Pipes. In order to bore and excavate the in situ material, place the steel casing, and receive the HCWID 3 Pipe, HCWID NO. 3 must dig a boring receiving station on the north side of the Canal (the “Station”).

4.5.2 The necessary location of the Station is in such close proximity to the Canal that it will practically destroy the Canal, the Pipes, and Plaintiff’s operations in that it will prevent service to Plaintiff’s customers. Second, the depth at which the HCWID 3 Pipe will be placed will destroy the Pipes. The steel casing’s placement and the vibrations caused by the boring will disturb the gravel bedding that supports the Pipes. Disturbing the gravel bedding will cause the Pipes’ seals to crack and leak, which will halt Plaintiff’s operations. All of this proposed activity would occur on property that neither the City of McAllen nor HCWID No. 3 legally have any right to access.

4.6 The City of McAllen granted HCWID NO. 3 an easement over certain parts of the Bicentennial Boulevard project for the express purpose of the installation of the HCWID 3 Pipe. *See Ex. B.* In fact, the City of McAllen and its agents cooperated with HCWID NO. 3 in preparing the plans and specifications for the installation of the HCWID 3 Pipe. *See id.* In entering into the HCWID 3 Agreement and in undertaking the obligation to install the HCWID 3 Pipe at the Canal, the City of McAllen has breached its Agreement with Plaintiff to “avoid[] future disruptions to [Plaintiff’s] operations” and instead facilitated future disruptions to Plaintiff’s operations. *See Ex. A to Plaintiff’s Original Petition.* Moreover, there exists no easement, recorded or otherwise, that the City of McAllen could have granted HCWID 3 to access the HCID NO. One Right-of-Way.

4.7 To the extent the City of McAllen claims HCID No. One granted it an unwritten license or permit or any other right or basis to access the HCID No. One Right-of-Way, such alleged license, permit, right or basis has been rescinded or is legally unenforceable. HCID No. One is discharged or excused from its obligation to perform, to the extent any obligation ever existed or that it has not performed, because the City of McAllen has materially breached the Agreement.

## **5. APPLICATION FOR TEMPORARY INJUNCTION**

5.1 Plaintiff realleges and incorporates by reference the foregoing paragraphs as though set forth fully herein.

5.2 Plaintiff's application for a temporary injunction is authorized by Section 65.011(1) of the Texas Civil Practice & Remedies Code. Plaintiff is entitled to the relief demanded, and all or part of the relief requires the restraint of some act prejudicial to the applicant. *Coastal Mar. Serv. V. City of Port Neches*, 11 S.W.3d 509, 515 (Tex. App.—Beaumont 2000, no pet.); *see e.g., Dallas Cty. V. Sweitzer*, 881 S.W.2d 757, 769 (Tex. App.—Dallas 1994, writ denied).

5.3 Plaintiff asks the Court to enjoin the City of McAllen, its agents, employees, contractors, subcontractors, and engineers and all those in concert or privity with any of them from accessing in any manner, either with personnel or equipment, any of HCID No. One's property, including the HCID No. One Right-of-Way, including any work necessary to install any paving or the HCWID 3 Pipe.

5.4 As set forth above, City of McAllen has breached its Agreement with Plaintiff by facilitating the disruption of Plaintiff's operations. *See* Exs. A and B to Plaintiff's Original Petition. Moreover, The City of McAllen has no legal right to access HCID No. One's property, including HCID No. One's Right-of-Way for any purpose nor to grant others the right to access

HCID No. One's property or HCID No. One's Right-of-Way. Accordingly, Plaintiff has established its cause of action and the probable right to the relief sought.

5.5 If Plaintiff's application is not granted, harm is imminent because City of McAllen and HCWID NO. 3 currently are planning to access the HCID No. One property, including HCID No. One's Right-Of-Way and likely have the means to begin installing paving and the HCWID 3 Pipe. The harm that will result if the injunction is not issued is irreparable because Plaintiff will lose control over its property and because Plaintiff's Pipes, Canal, infrastructure, and operation will be destroyed by or materially interfered with by the City of McAllen's actions.

5.6 Plaintiff has no adequate remedy at law, or otherwise, and will suffer immediate and irreparable harm. Further Plaintiff is concerned that irreparable injury to HCID No. One's property, including HCID NO. One's Right-Of-Way itself may occur, which would negate the requirement that Plaintiff show there is no adequate remedy at law. TEX. CIV. PRAC. & REM. CODE § 65.011(5). Plaintiff is willing to post a reasonable bond to facilitate the injunctive relief requested. However, Plaintiff is immune from liability for any claims for damages by the City of McAllen.

5.7 Plaintiff asks the Court to set its application for temporary injunction for hearing, and after the hearing, issue a temporary injunction against City of McAllen enjoining City of McAllen, its agents, employees, contractors, subcontractors, and engineers and anyone in concert or privity with any of them from accessing or conducting any work related to the installation of paving or HCWID 3 Pipe on HCID No. One property, including the HCID No. One Right-Of-Way.

## **6. ATTORNEYS' FEES**

In the preparation and prosecution of this lawsuit, Plaintiff has retained the law firm of Atlas, Hall & Rodriguez, LLP to prosecute this action on its behalf and has agreed to pay the firm's

reasonable and necessary attorney's fees. Plaintiff is entitled to recover its attorneys' fees and costs from City of McAllen pursuant to the Agreement.

## **7. PRAYER**

WHEREFORE, PREMISES CONSIDERED, HIDALGO COUNTY IRRIGATION DISTRICT NO. ONE prays that the that after notice and hearing the Temporary Injunction is granted, that a Permanent Injunction is granted after trial, that Plaintiff recover its attorney fees and court costs, and for such other relief in law or equity to which Plaintiff may be justly entitled.

Respectfully submitted,

**ATLAS, HALL & RODRIGUEZ, LLP**  
P. O. Box 3725 (78502-3725)  
818 W. Pecan Blvd.  
McAllen, Texas 78501  
Phone: (956) 682-5501  
Facsimile: (956) 686-6109

By: /s/ Daniel G. Gurwitz

Daniel G. Gurwitz  
State Bar No. 00787608  
Email: [dgurwitz@atlashall.com](mailto:dgurwitz@atlashall.com)  
Meredith D. Helle  
State Bar No. 24106188  
Email: [mlarson@atlashall.com](mailto:mlarson@atlashall.com)  
Allison Boyle  
State Bar No. 24087197  
Email: [aboyle@atlashall.com](mailto:aboyle@atlashall.com)  
**ATTORNEYS FOR PLAINTIFF**

Certificate of Service

I hereby certify that a true and correct copy of the foregoing instrument was forwarded to All counsel of record on this the 1st day of June 2020 via the electronic filing manager.

**CITY OF MCALLEN**

P. O. Box 220  
1300 Houston  
McAllen, Texas 78501-0220  
Telephone: (956) 681-1090  
Facsimile: (956) 681-1099  
Kevin Pagan  
City Attorney  
Texas State Bar No. 15406460  
[kpagan@mcallen.net](mailto:kpagan@mcallen.net)  
Isaac J. Tawil  
Assistant City Attorney  
Texas State Bar No. 24013605  
[itawil@mcallen.net](mailto:itawil@mcallen.net)  
Austin W. Stevenson  
Assistant City Attorney  
Texas State Bar No. 24085961  
[astevenson@mcallen.net](mailto:astevenson@mcallen.net)

By: /s/ Daniel G. Gurwitz  
Daniel G. Gurwitz

---

## EXHIBIT 6

---





said rule and a discovery control plan tailored to the circumstances of this suit under an agreed order submitted by the parties or ordered by this Court on its own initiative.

2.  
Parties

2.1 HCWID#3 is a political subdivision of the State of Texas having been originally established in 1921 as a water improvement district and converted in 1926 into a water control and improvement district. HCWID#3 has its principal office in Hidalgo County, Texas and operates under Article XVI, Section 59 of the *Texas Constitution* and the applicable provisions of Chapters 49 through 51 of the *Texas Water Code*. Among other purposes, Section 51.121(b) of the *Texas Water Code* provides that HCWID#3 may provide for the control, storage, preservation and distribution of its water and the water of its river and streams for irrigation and all other useful purposes. To accomplish that and other purposes, HCWID#3 may construct all works and improvements, including underground irrigation pipelines and related structures, necessary for irrigation and to supply water for municipal and domestic uses, commercial purposes, and all other beneficial uses. Among other powers, the *Texas Water Code* authorizes HCWID#3 to (i) provide water to customers within its boundaries, (ii) sell surplus water to customers, including other districts, outside its boundaries and in the vicinity of HCWID#3, and (iii) pump and deliver irrigation water to other districts in the vicinity.

2.2 City is a Texas home-rule municipality organized under the laws of the State of Texas and located in Hidalgo County, Texas. City has appeared in the above-styled and numbered cause, having filed an answer to HCID#1's original petition, and has invoked the jurisdiction of this Court having filed its third party petition against HCWID#3. If necessary, City may be served

by delivery of process to its Mayor, Jim Darling, or its City Manager, Roel Roy Rodriguez, at McAllen City Hall, 1300 Houston, McAllen, Texas 78501.

2.3 HCID#1 is a water irrigation district organized and operating under the laws of the State of Texas and located in Hidalgo County, Texas. HCID#1 has appeared in the above-styled and numbered cause and has invoked the jurisdiction of this Court, having filed its petition and application for injunctive relief. If necessary, HCID#1 may be served by delivery of process to its President, Robert L. Bell, Jr., or its General Manager, Bobby R. McDaniel, at 1904 N. Expressway 281, Edinburg, Texas 78540.

### 3.

#### Venue and Jurisdiction

3.1 Venue is proper in Hidalgo County, Texas under Sections 15.002 and 15.062, *Texas Civil Practice and Remedies Code*, because (i) all of the events or omissions giving rise to HCWID#3's claims, as well as the claims of all other parties to this suit, occurred in Hidalgo County, Texas, and (ii) venue of the main action (*i.e.*, HCID#1's suit against City) establishes venue of properly joined counterclaims, cross-claims and third party claims.

3.2 The relief sought by HCWID#3 against both City and HCID#1 is within the jurisdictional limits of this Court.

3.3 This Court has subject matter jurisdiction over HCWID#3's counterclaim against City because City has invoked the jurisdiction of this Court by filing its Third Party Petition and seeking affirmative relief directly against HCWID#3 and this counterclaim is germane to and connected with City's claims. Further, this Court has subject matter jurisdiction over HCWID#3's counterclaim because City's immunity, if any, is waived pursuant to Section 271.152, *Texas Local Government Code*.

3.4 HCID#1 has invoked the jurisdiction of this Court by filing its suit and seeking affirmative relief directly against City based on claims for breach of contract and for injunctive relief directly against City (and indirectly against HCWID#3) arising out of the construction by City of an extension of Bicentennial Boulevard and HCWID#3's irrigation pipeline (the "Pipeline") across HCID#1's canal right-of-way. In response to, and as a result of, HCID#1's suit, City filed its third party action against HCWID#3 asserting breach of contract claims arising out of the construction by City of the extensions of Bicentennial Boulevard and the Pipeline across HCID#1's canal right-of-way.

HCWID#3's counterclaim against City and cross-claim against HCID#1 arise out of (i) the construction by City of the same extensions of Bicentennial Boulevard and the Pipeline that form the basis of the HCWID#1's suit and City's third party action, (ii) HCWID#3's easement property interest in and rights to City's right-of-way for Bicentennial Boulevard and HCID#1's canal right-of-way, (iii) HCWID#3's statutory right to construct its Pipeline in said rights-of-way, and (iv) the actions by City and HCID#1, together and separately, to prevent HCWID#3 from exercising its property and statutory rights and from constructing the extension of its Pipeline.

This Court has subject matter jurisdiction over HCWID#3's cross-claim against HCID#1 and HCID#1 has waived its immunity, if any, because HCWID#3's claims arise out of the same transaction (*i.e.*, the construction of the extension of the Pipeline) and are germane to and connected with HCID#1's claims asserted in this same cause as well as City's defenses to HCID#1's claims and City's third party claims against HCWID#3. In other words, all of the claims asserted by all parties arise out of and are germane to and connected with the same construction

project and the parties' property interests in and rights to the same overlapping portion of City's public street right-of-way and HCID#1's public canal right-of-way.

4.

Factual Background

4.1 For some time, City has planned to acquire right-of-way and construct an extension of its roadway or street known as Bicentennial Boulevard from Auburn Avenue north to State Highway 107. To begin and accomplish that construction project, it was necessary for City, among other things, (i) to obtain the right to cross and build Bicentennial Boulevard over HCID#1's main canal and canal right-of way, and (ii) to acquire 2.53 acres from HCWID#3 out of its main canal right-of-way.

4.2 On or about March 15, 2017, HCID#1 and City entered into an *Interlocal Cooperation Agreement* (Exhibit A to HCID#1's original petition) pursuant to which City agreed to and did design and pay for the construction of the infrastructure and facilities necessary to relocate a portion of HCID#1's canal underground to accommodate the crossing of the canal right-of-way by the extension of Bicentennial Boulevard. Although City incurred the cost to design the improvements and paid at least \$575,000 for the construction, City neglected to acquire or obtain any easement, permit, license, or other property interest from HCID#1 for the Bicentennial Boulevard right-of-way and crossing.

4.3 HCWID#3 has received inquiries from various persons and private and public entities in the vicinity regarding the possibility of either purchasing surplus water from HCWID#3 or contracting with HCWID#3 for the pumping and delivery of water. Some of those persons and entities are located within the boundaries of HCID#1 and some are in other water districts or in no district at all. Because HCWID#3's water distribution system consists almost entirely of

underground pipelines rather than open canals and laterals, HCWID#3 experiences significantly less loss of water to evaporation and can sell or deliver water to customers and users more efficiently and at lower cost than HCID#1. For that reason, HCWID#3's governing body began exploring and planning for an extension of its distribution system to accommodate existing and future water demand from potential customers and users, including other water districts such as HCID#1, in the vicinity of and to the north of HCWID#3.

4.4 As part of its original planning, HCWID#3 approached HCID#1 and offered to pay the cost of a pipeline extension and connection to HCID#1's distribution system to supplement and provide a backup for HCID#1's capacity to sell and deliver water to its customers. City and its Public Utility Board are substantial customers of HCID#1 and intervened in opposition to HCWID#3's proposal and persuaded HCID#1 to turn down HCWID#3's offer. On or about February 25, 2019, City and its Public Utility Board wrote a joint letter to HCID#1 expressing their opposition to the extension of the pipeline and the proposed connection between HCWID#3 and HCID#1. On or about April 23 and April 24, 2019, the McAllen Public Utility Board and City wrote additional letters to HCWID#3 opposing the extension of the irrigation pipeline and shared those letters with HCID#1.

4.5 On or about August 24, 2018, City notified HCWID#3 that City was finalizing its plans to extend Bicentennial Boulevard and intended to initiate an eminent domain proceeding to condemn a portion of HCWID#3's main canal right-of-way unless HCWID#3 agreed to a voluntary sale of fee simple title for a purchase price of \$1.50 per square foot. Because HCWID#3 is a public governmental body, it is prohibited by Texas law from selling property unless it is surplus and no longer needed by HCWID#3. Even if surplus, the property cannot be sold for less

than fair market value. HCWID#3 obtained an independent appraisal of the property at a fair market value of \$746,248, or \$6.75 per square foot, and declined City's offer.

4.6 After lengthy and sometimes contentious negotiations, City and HCWID#3 finally agreed to a transaction in which (i) HCWID#3 agreed to declare 2.53 acres, more or less, out of its main canal right-of-way as surplus property and to convey it to City as part of its public right-of-way for Bicentennial Boulevard, (ii) City agree to grant a 10-foot wide non-exclusive easement in the Bicentennial Boulevard right-of-way to HCWID#3 for the "installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of an underground 48-inch pipeline transporting raw water, air release valves, and other equipment required for operation of the pipeline", and (iii) the two entities would cooperate in the simultaneous construction of an extension of both Bicentennial Boulevard and the Pipeline to be performed by a single general contractor pursuant to a construction contract selected and negotiated by City through a competitive bid process.

4.7 On or about August 28, 2019, but effective as of August 8, 2019, (i) HCWID#3 sold the 2.53 acres to City and executed and delivered a *Deed without Warranty* which is recorded as Document No. 3044048 in the Official Records of Hidalgo County, Texas, and (ii) City granted the 10-foot easement in the Bicentennial Boulevard right-of-way to HCWID#3 by executing and delivering an *Easement Agreement* (the "HCWID#3 ROW Easement") which is recorded as Document No. 3044049 in the Official Records of Hidalgo County, Texas. The easement property is a 10-foot wide strip approximately 2.4 miles in length beginning just north of Auburn Avenue and ending at State Highway 107. In the *Easement Agreement*, City represented the easement property to be in the public right-of-way for Bicentennial Boulevard and warranted City's title to

the property including any property interests which may not have been acquired at the time and were subsequently acquired by City.

4.8 Pursuant to the negotiations between HCWID#3 and City, as confirmed in the *Deed without Warranty*, and as an inducement for HCWID#3 to reduce the purchase price of the 2.53 acres, City agreed, as part of the consideration, (i) to execute the *Easement Agreement*, (ii) to execute a mutually acceptable *Interlocal Cooperation Agreement* (the “McAllen-HCWID#3 Agreement”) providing for the construction of the Pipeline, and (iii) to consent, pursuant to Section 552.103, *Texas Local Government Code*, to the construction of the Pipeline in the right-of-way of Bicentennial Boulevard. Based on those agreements and inducements by City, HCWID#3 agreed to a \$309,572 reduction in the cash consideration for the 2.53 acres.

4.9 On or about August 29, 2019, City and HCWID#3 executed the McAllen-HCWID#3 Agreement (Exhibit A to City’s Third Party Petition) which stated, among other matters, that:

- (a) HCWID#3 provided construction plans to City for the Pipeline;
- (b) City approved the design, size, and location of the Pipeline in the Bicentennial Boulevard right-of-way;
- (c) City consented, pursuant to Section 552.103, *Texas Local Government Code*, to the construction and maintenance of the Pipeline in the Bicentennial Boulevard right-of-way;
- (d) City included the work and materials (other than the 48-inch PVC pipe) for the Pipeline in its competitive bid package;
- (e) HCWID#3 would not require a permit from City for the Pipeline but would be responsible for obtaining any other required permits;
- (f) HCWID#3 would deliver an irrevocable letter of credit to City in an amount sufficient to pay the cost of the Pipeline in the competitive bid accepted by the City;



- (g) HCWID#3 would furnish and pay for all materials for the Pipeline not included in the accepted bid and contract (*i.e.*, the 48-inch PVC pipe);
- (h) HCWID#3 would provide evidence that all items have been obtained so that the Pipeline can be completed without delays, “gaps”, or other hindrances to City’s roadway project; and
- (i) HCWID#3 shall pay for change orders requested by HCWID#3 and associated with the Pipeline extension.

4.10 In reliance upon City’s inducements, representations, warranties, covenants, promises, and agreements, all of which are included in and evidenced by the *Deed without Warranty*, the HCWID#3 ROW Easement, and the McAllen-HCWID#3 Agreement, and after incurring substantial legal and engineering expense, HCWID#3 ordered the special manufacture of 6,172 linear feet of 48-inch PVC pipe at a total cost of \$779,016.89 and arranged and secured, paid for, and delivered an irrevocable \$800,000 letter of credit from Texas Regional Bank for the benefit of City.

4.11 After receiving competitive bids, City accepted a bid from and executed a contract with Texas Cordia Construction (“TCC”) to construct the extensions of both Bicentennial Boulevard and the Pipeline. The contract price for the Pipeline and HCWID#3’s obligation was \$679,071.

4.12 Completion of the Pipeline requires crossing under an irrigation line of Hidalgo County Irrigation District No. 2 (“HCID#2”) and HCID#1’s siphon structures located in its main canal right-of-way. HCWID#3’s engineer provided both HCID#2 and the engineer for HCID#1 with the construction plans for the crossings. Neither objected to or expressed concerns about the plans or the crossings. Pursuant to the McAllen-HCWID#3 Agreement, HCWID#3 requested and received a permit from HCID#2. HCWID#3 also requested a crossing permit from HCID#1 and

agreed to pay its \$24,000 permit fee; however, HCID#1 denied the request and refused to issue a permit. Because City and its Public Utility Board had previously intervened in opposition to HCWID#3's pipeline project, HCWID#3 requested City to inform HCID#1 that City had withdrawn its opposition and was now cooperating with HCWID#3 in the construction of the Pipeline extension. City refused to do so itself or on behalf of its Public Utility Board.

4.13 Because HCID#1 refused to issue HCWID#3 a crossing permit, HCWID#3 initiated an eminent domain process and offered to purchase a subsurface only easement from HCID#1 for \$24,000. On or about November 14, 2019, after that good faith offer was rejected by HCID#1, HCWID#3 filed a petition in Cause No. CCD-0517-D styled *Hidalgo County Water Improvement District No. 3 v. Hidalgo County Irrigation District No. 1* in the County Court at Law No. 1 to condemn a subsurface easement (the "HCWID#3 Condemned ROW Easement") located entirely within the public right-of-way for Bicentennial Boulevard and entirely within the boundaries of the HCWID#3 ROW Easement. Special Commissioners were duly appointed and, after a hearing, awarded \$1,900 as adequate compensation for the subsurface easement. HCWID#3 paid the amount of the award into the court's registry and has satisfied all statutory requirements to be entitled to immediate possession of the easement. Although HCID#1 has subsequently filed its original answer and objections to the Special Commissioners' award and a plea to the jurisdiction, HCID#1 has taken no further action to prevent HCWID#3's possession of the easement in that condemnation suit.

4.14 On or about March 10, 2020, HCID#1 filed this suit claiming that City's cooperation with HCWID#3 in the construction of the Pipeline is a breach of City's *Interlocal*

*Cooperation Agreement* with HCID#1 and the construction should be temporarily and permanently enjoined.

4.15 On or about March 16, 2020, at City's insistence and with HCID#1's consent, the engineers for City, HCID#1 and HCWID#3 met to review the construction plans for the HCID#1 canal right-of-way crossing and concerns expressed by HCID#1. HCWID#3's engineer suggested changes to the design which were acceptable to the engineers for City and HCID#1. Based on those suggestions, HCWID#3 modified the plans for the construction of the crossing the very next day and proposed a change order (the "Change Order") to the contract between City and TCC to incorporate those modifications. HCWID#3 made the modifications for the sole purpose of satisfying any objections by HCID#1 to the canal crossing.

4.16 On or about May 21, 2020, TCC presented City with a price proposal for the Change Order which included a cost increase of \$459,199 to HCWID#3 for the pipeline crossing under HCID#1's canal right-of-way and a 30-day extension of the construction timeline.

4.17 On May 29, 2020, the HCWID#3 board of directors met in a special meeting and approved the modified construction plans, the Change Order, and TCC's price and timeline proposal.

4.18 On June 1, 2020, the City's governing body met in a special meeting and, based on the City engineer's approval and recommendation, voted unanimously to approve the Change Order and TCC's price and timeline proposal. That same day, HCID#1 amended its claims against City in this suit and claimed for the first time that the City should be enjoined from constructing both Bicentennial Boulevard and the Pipeline because City has no right or property interest which would permit City to construct either the Bicentennial Boulevard extension or the Pipeline across

HCID#1's canal right-of-way (see *Plaintiff's First Amended Petition, Application for Temporary Restraining Order, and Application for Temporary Injunction* at ¶4.2 on p. 3 and ¶¶5.1-5.7 on pp. 5-6). Counsel for HCID#1 delivered a letter to TCC denying access to HCID#1's property and stating that TCC would be trespassing and further stating a belief that TCC or its employees could be criminally charged with a Class B misdemeanor for damaging or interfering with HCID#1's property.

4.19 One week later, on June 8, 2020, the City's governing body reversed its decision and, in a regular meeting, voted to "reject the Change Order, deny the Change Order, notify [HCID#1 and HCWID#3] that it's been denied in exchange for permission from District 1 to cross the canal." City denied the Change Order although no action item regarding the Change Order was included in the notice of the meeting or on the agenda for the meeting.

4.20 On June 17, 2020, HCID#1 and City entered into an *Easement in Gross Agreement* which is recorded as Document No. 3121836 in the Official Records of Hidalgo County, Texas and in which HCID#1 conveys an easement to City for 0.40 acres out of HCID#1's canal right-of-way "for the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of the road, sidewalks, curb and gutter, commonly known as the Bicentennial Boulevard project". A true and correct copy of the *Easement in Gross Agreement* is attached hereto as Exhibit A.

4.21 Although Bicentennial Boulevard is and will continue to be a public street or roadway and the *Easement in Gross Agreement* conveys an easement for the public right-of-way for that street or roadway, HCID#1 and City conspired to prepare and did prepare the instrument to include impermissible restrictions on the current and future use of that public right-of-way in

violation of Texas law and public policy. For example, absent a court order or written agreement between HCID#1 and City, the *Easement in Gross Agreement* prohibits “installation of any pipeline or any underground facility on, in or under HCID#1’s siphon” and further provides that if City “installs or allows the installation of any pipeline or underground infrastructure on, in or under [HCID#1’s] siphon, the Easement granted here [*i.e.*, Bicentennial Boulevard and its right-of-way] is immediately extinguished and thereafter null and void ab initio.” In addition, HCID#1 and City provided that the easement and related rights are an “exclusive easement in gross for the benefit of City” which would deprive various parties, including HCWID#3, of their common law and statutory rights to install utilities and other facilities in the public right-of-way of streets and roadways.

4.22 In addition to the foregoing impermissible restrictions in violation of public policy, HCID#1 and City have colluded and inspired to interfere with HCWID#3’s rights under and use of the HCWID#3 ROW Easement and the HCWID#3 Condemned ROW Easement and to prevent HCWID#3 from constructing its Pipeline in the Bicentennial Boulevard right-of-way as previously agreed and promised by City and as HCWID#3 has the right to do under Section 49.220, *Texas Water Code*, and Section 552.103, *Texas Local Government Code*. HCID#1 and City have attempted to accomplish their objective by manipulating the boundaries of the easement property and therefore the Bicentennial Boulevard right-of-way to exclude both the HCWID#3 ROW Easement conveyed to HCWID#3 by City and the HCWID#3 Condemned ROW Easement acquired by HCWID#3 from HCID#1 in the eminent domain proceeding.

5.

APPLICATION FOR INJUNCTIVE RELIEF AGAINST CITY AND HCID#1

5.1 HCWID#3 re-alleges those factual matters set out in the foregoing paragraphs, including specifically Paragraphs 3.1 through 3.3 and 4.1 through 4.22, and incorporates each of them by reference as though fully repleaded herein.

5.2 HCWID#3 is the owner of certain property interests and rights threatened with irreparable injury by the conduct of City and HCID#1. HCWID#3 is the grantee in the HCWID#3 ROW Easement and has the right thereunder to construct the Pipeline on the easement property which was described as entirely within the public right-of-way of Bicentennial Boulevard. The HCWID#3 ROW Easement provides that City consents to the construction of the Pipeline within that public right-of-way pursuant to Section 552.103, *Texas Local Government Code*, consent which is required for laying water system pipes through a street of a municipality. In addition to its property interests and rights under the HCWID#3 ROW Easement, HCWID#3 also has the established and long recognized right under Texas common law, as well as the statutory right under Section 49.220, *Texas Water Code*, to construct and maintain the extension of its Pipeline in the public right-of-way for Bicentennial Boulevard and the public right-of-way for the HCID#1 main canal. For that reason, HCWID#3 required and insisted that the easement property described in the HCWID#3 ROW Easement be located and specified to be within that public right-of-way.

5.3 City and HCID#1, each acting on their own and in concert with each other, have and are knowingly and intentionally taking steps to prevent HCWID#3's Pipeline from being built in the Bicentennial Boulevard right-of-way and from crossing HCID#1's canal right-of-way and, therefore, to deprive HCWID#3 of its contractual, common law, and statutory rights to complete the construction of the Pipeline. To date, City and HCID#1 have done the following:

- (a) City and its Public Utility Board have used their position as a substantial customer of HCID#1 to consistently “poison the well” by communicating City’s opposition to the extension of HCWID#3’s irrigation pipeline and by encouraging and persuading HCID#1 to oppose the extension and its crossing under HCID#1’s canal right-of-way (see ¶4.4 at p. 6);
- (b) Even after City agreed to cooperate with HCWID#3 in the construction of the extensions of Bicentennial Boulevard and the Pipeline, City refused HCWID#3’s request to withdraw its opposition to the pipeline project or to inform HCID#1 of the cooperative agreements (see ¶4.12 at pp. 9-10);
- (c) Although City’s engineers had approved the original design and construction plans for the crossing of HCWID#3’s Pipeline under HCID#1’s canal right-of-way (see ¶4.9 at p. 8, McAllen-HCWID#3 Agreement and HCWID#3 ROW Easement), City refused to authorize TCC to proceed with construction of the crossing unless HCWID#3 modified the design and plans to satisfy HCID#1 (see ¶4.15 at p. 11);
- (d) Even after HCWID#3 modified the design and construction plans for the crossing of the Pipeline under HCID#1’s canal right-of-way on or about March 17, 2020, as suggested by HCID#1’s engineer and as acceptable to City’s engineers, HCID#1 refused to consent to the crossing and City delayed requesting and approving the Change Order until June 1, 2020 (see ¶4.15 at p. 11 and ¶4.18 at pp. 11-12);
- (e) Based on recommendations from the City’s engineers, on June 1, 2020, City approved the Change Order authorizing and directing TCC to construct the crossing of HCWID#3’s Pipeline under HCID#1’s canal right-of-way in the easement property described in the HCWID#3 ROW Easement and the HCWID#3 Condemned ROW Easement and, on June 8, 2020 and immediately after consulting with HCID#1, reversed that approval and rejected the Change Order (see ¶4.18 at pp. 11-12 and ¶4.19 at p. 12); and
- (f) On or about June 1, 2020, HCID#1 threatened TCC with the possibility of criminal misdemeanor charges and trespassing if TCC entered HCID#1 property to construct the Pipeline across HCID#1 property (see ¶4.19 at [ / 12 and ¶4.18 at pp. 11-12). On that same date, HCID#1 filed amended pleadings in this suit claiming for the first time that City had no easement, permit, license, or other property interest which would allow City to build either Bicentennial Boulevard or the Pipeline across HCID#1’s canal right-of-way.
- (g) City cooperated with HCID#1 in negotiating and executing the *Easement in Gross Agreement* which prohibits the construction of HCWID#3’s Pipeline

in the absence of a court order or an agreement between HCID#1 and City and which relocates the right-of-way of Bicentennial Boulevard so as to exclude the easement property in both the HCWID#3 ROW Easement and the HCWID#3 Condemned ROW Easement (see ¶¶4.20-4.22 at pp. 12-13).

5.4 The foregoing acts by City and HCID#1, each acting on their own and in concert with each other, threaten irreparable harm to HCWID#3's property interests and rights and are without any right or entitlement of City or HCID#1 in that said acts violate the HCWID#3 ROW Easement, the McAllen-HCWID#3 Agreement, the consent constituting consideration for the *Deed without Warranty* from HCWID#3 to City, and HCWID#3's rights under Texas common law and statutory rights under Section 49.220, *Texas Water Code*.

5.5 Unless City and HCID are enjoined from taking actions to prohibit or prevent HCWID#3 from completing the construction of its extension of the Pipeline including the crossing under the HCID#1 canal right-of-way, HCWID#3 has been and will continue to be irreparably damaged and injured in that it will have expended and incurred in excess of \$1,500,000 and will have been deprived of potential revenues from prospective customers which would be served as the result of the extension of its Pipeline. The full scale of the harm would be impossible to calculate at this time. Further, unless City is enjoined from continuing with the construction of Bicentennial Boulevard north of the northern boundary of HCID#1's canal right-of-way pending the final disposition of this suit, HCWID#3 will be unable to complete construction of the extension of its Pipeline without removing all or a portion of that northernmost segment of Bicentennial Boulevard at a prohibitive expense far in excess of the reasonable cost of installation of the Pipeline before construction of Bicentennial Boulevard.

5.6 The HCWID#3 ROW Easement provides that:



“This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.”

5.7 In this suit, HCID#1 has claimed that the construction of Bicentennial Boulevard and the Pipeline is occurring on HCID#1’s canal right-of-way property and that neither City nor HCWID#3 legally have any right to access. (see HCID#1’s amended petition at ¶4.5.2 at p. 4). HCWID#3’s right to enforce its statutory right to install its Pipeline in the public right-of-way of HCID#1’s canal under Section 49.220, *Texas Water Code*, by injunction is directly germane to, connected with, and defensively responsive to HCID#1’s denial of that right.

5.8 For the foregoing reasons, HCWID#3 requests that, after hearing, this honorable Court temporarily enjoin City and HCID#1, together with their respective officers, employees, and agents, from taking any actions to directly or indirectly prohibit or prevent HCWID#3 or TCC from constructing HCWID#3’s Pipeline in the easement property described in the HCWID#3 ROW Easement or in the right-of-way of the extension of Bicentennial Boulevard, including in the easement property described in the *Easement in Gross Agreement*, and in the HCID#1 canal right-of-way and that this honorable Court mandate and order City, together with its officers, employees, and agents, to approve the Change Order and comply with City’s obligations under the McAllen-HCWID#3 Agreement and the HCWID#3 ROW Easement. HCWID#3 further requests that, after hearing, this honorable Court temporarily enjoin City, together with its officers, employees, and agents, from continuing construction of Bicentennial Boulevard north of the northern boundary of HCID#1’s canal right-of-way pending final disposition of this suit.

5.9 HCWID#3 further requests that, after trial, this honorable Court permanently enjoin City and HCID#1, together with their respective officers, employees, and agents, from taking any actions to directly or indirectly prohibit or prevent HCWID#3 or TCC from installing, constructing, operating, maintaining, replacing, repairing, upgrading, or removing HCWID#3's Pipeline in the easement property described in the HCWID#3 ROW Easement or in the right-of-way of the extension of Bicentennial Boulevard, including in the easement property described in the *Easement in Gross Agreement*, and in the HCID#1 canal right-of-way and that this honorable Court enter a judgment mandating and ordering City, together with its officers, employees, and agents, to approve the Change Order and such other change orders as may be reasonably necessary to allow completion of HCWID#3's Pipeline, including but not limited to the crossing under HCID#1's canal right-of-way, and to comply with City's obligations under the McAllen-HCWID#3 Agreement and the HCWID#3 ROW Easement. HCWID#3 further requests that, after hearing, this honorable Court temporarily enjoin City, together with its officers, employees, and agents, from continuing construction of Bicentennial Boulevard north of the northern boundary of HCID#1's canal right-of-way pending final disposition of this suit.

5.10 The HCWID#3 ROW Easement further provides that "If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs." HCWID#3 has employed the undersigned attorneys to prosecute this claim to enforce the HCWID#3 ROW Easement and to protect HCWID#3's interests and rights thereunder. Accordingly, HCWID#3 requests that it recover its reasonable attorney's fees and court and other costs incurred in connection with the prosecution of this claim.

6.  
HCWID#3 COUNTERCLAIM AGAINST CITY

Breach of Contract

6.1 HCWID#3 re-alleges those factual matters set out in the foregoing paragraphs, including specifically Paragraphs 3.1 through 3.3 and 4.1 through 4.22, and incorporates each of them by reference as though fully repleaded herein.

6.2 HCWID#3 pleads this cause of action against City for breach of contract in the alternative and without waiving the foregoing.

6.3 On or about August 28 and 29, 2019, HCWID#3 and City executed and entered into written contracts and agreements consisting of (i) the McAllen-HCWID#3 Agreement (Exhibit A to City's Third Party Petition) and (ii) the HCWID#3 ROW Easement (see ¶4.7 through ¶4.9 at pp. 7-9). A true and correct copy of the HCWID#3 ROW Easement is attached hereto as Exhibit B. The McAllen-HCWID#3 Agreement and the HCWID#3 ROW Easement (collectively referred to herein as the "Pipeline Contracts") are both contracts subject to Chapter 271, Subchapter I of the *Texas Local Government Code*.

6.4 HCWID#3 has fully performed each of its obligations under each of the above-described contracts and agreements. In particular, HCWID#3 has (i) provided construction plans for the Pipeline extension to City, (ii) obtained a crossing permit from HCID#2, (iii) condemned the HCWID#3 Condemned ROW Easement from HCID#1, (iv) delivered an irrevocable \$800,000 letter of credit from Texas Regional Bank to City, (v) furnished and paid for the 48-inch PVC pipe required for the construction of the HCWID#3 Pipeline, and (vi) approved and reserved funds to pay for the Change Order.

6.5 City breached the McAllen-HCWID#3 Agreement as follows:

- (a) Despite having approved the design and location of HCWID#3's Pipeline, City has subsequently refused to allow TCC to construct the crossing of HCWID#3's Pipeline under the HCID#1 canal right-of-way;
- (b) Despite having consented to the construction of the Pipeline in the Bicentennial Boulevard right-of-way, City has subsequently refused to allow TCC to construct the crossing of HCWID#3's Pipeline under the HCID#1 canal right-of-way and the Bicentennial Boulevard right-of-way;
- (c) After having first approved the Change Order adopting modifications to the crossing of the Pipeline under HCID#1's canal right-of-way and in the Bicentennial Boulevard right-of-way, City rejected and denied the Change Order refusing to allow TCC to construct the crossing as approved by HCWID#3 and approved and recommended by City's own engineers;
- (d) Despite having approved the design and location of HCWID#3's Pipeline, having consented and agreed to its installation in the Bicentennial Boulevard right-of-way, and having executed a contract with TCC to complete that construction in that location, City, acting in concert with HCID#1, negotiated, accepted and executed the *Easement in Gross Agreement* which (i) relocated the eastern boundary of the Bicentennial Boulevard right-of-way to exclude the previously approved and agreed location of the crossing of HCWID#3's Pipeline under the HCID#1 canal right-of-way, (ii) prohibited the construction of HCWID#3's Pipeline in that previously approved and agreed location, (iii) delegated and transferred to HCID#1 the right to approve or disapprove of the construction of the HCWID#3 Pipeline crossing, and (iv) imposed restrictions on the use and future use of the Bicentennial Boulevard public right-of-way which violate public policy and Texas law and deprive HCWID#3 of its common law and statutory right to construct its Pipeline in that public right-of-way.

6.6 City breached the HCWID#3 ROW Easement as follows:

- (a) Despite having warranted title to the Easement Property including that portion crossing HCID#1's canal right-of-way, City had no title, easement, permit, license or other property interest in that part of the Easement Property;
- (b) Despite having agreed that the entirety of the Easement Property, including that portion crossing HCID#1's canal right-of-way, was located within the right-of-way of Bicentennial Boulevard, City had no title, easement, permit, license or other property interest in that part of the Easement Property at the time it executed the HCWID#3 ROW Easement and granted the easement to HCWID#3;

- (c) Despite having agreed that the entirety of the Easement Property, including that portion crossing HCID#1's canal right-of-way, was located within the right-of-way of Bicentennial Boulevard, when City subsequently acquired and easement from HCID#1 for the Bicentennial Boulevard crossing, City, acting in concert with HCID#1, intentionally excluded HCWID#3's easement from the public right-of-way of Bicentennial Boulevard;
- (d) By refusing to approve the Change Order or to allow TCC to construct the crossing of HCWID#3's Pipeline under the HCID#1 canal right-of-way, City deprived HCWID#3 of its rights under and the benefit of the HCWID#3 ROW Easement; and
- (e) City further deprived HCWID#3 of its rights under and the benefit of the HCWID#3 ROW Easement by negotiating, accepting and executing the *Easement in Gross Agreement* with HCID#1 which (i) relocated the eastern boundary of the Bicentennial Boulevard right-of-way to exclude any portion of the Easement Property previously approved and agreed for the crossing of HCWID#3's Pipeline under the HCID#1 canal right-of-way, (ii) prohibited the construction of HCWID#3's Pipeline in the relocated Bicentennial Boulevard right-of-way, (iii) delegated and transferred to HCID#1 the right to approve or disapprove of the construction of the HCWID#3 Pipeline crossing, and (iv) imposed restrictions on the use and future use of the Bicentennial Boulevard public right-of-way which violate public policy and Texas law and deprive HCWID#3 of its common law and statutory right to construct its Pipeline in that public right-of-way.

6.7 As a result of City's breaches of the Pipeline Contracts, as set out above, HCWID#3 has sustained financial harm and has lost the benefits expected to be received from those agreements if City had performed as promised and if HCWID#3 were allowed to complete the construction of the extension of its Pipeline. In this connection, HCWID#3 alleges and will show that it has (i) reduced the sales price of the 2.53 acres sold to City by \$309,000 as consideration for an easement which has been rendered worthless by City, (ii) spent or obligated itself to spend approximately \$780,000 for specially manufactured PVC pipe for which HCWID#3 will no longer have any use, (iii) spent yet to be determined amounts for engineering services in connection with the Pipeline, (iv) spent yet to be determined amounts for legal services in connection with the

agreements between HCWID#3 and City, the Pipeline, and the eminent domain proceeding against HCID#1, (v) incurred court costs, fees for special commissioners, compensation deposit, and appraisal fees in connection with the eminent domain proceeding against HCID#1, (vi) incurred bank charges for the issuance of an \$800,000 letter of credit, (vii) incurred obligations for a yet to be determined portion of the approximately \$679,000 attributable to the Pipeline and owed to TCC for work and materials which will no longer be of any use or benefit to HCWID#3, and (viii) the loss of future income which would have been realized from customers and water districts to be served by HCWID# using the capacity of the Pipeline extension.

6.8 HCWID#3 has employed the undersigned attorneys to prosecute this claim for breaches of the Pipeline Contracts and to recover HCWID#3's damages resulting from those breaches and protect HCWID#3's interests and rights thereunder. Accordingly, HCWID#3 requests that it recover its reasonable attorney's fees and court and other costs incurred in connection with the prosecution of this claim.

Conspiracy to Commit Tortious Interference

6.9 HCWID#3 pleads this cause of action against City for conspiracy to commit tortious interference in the alternative and without waiving the foregoing.

6.10 City acted in concert with HCID#1 and conspired with HCID#1 by such concerted action to effectuate the breach by City of the Pipeline Contracts and the proximate cause of the damages and harm sustained by HCWID#3 as described in Paragraph 5.14 above.

6.11 The acts in concert and conspiracy between City and HCID#1 include but are not necessarily limited to the following:

- (a) After City approved the Change Order which would have allowed TCC to proceed with construction of the HCWID#3 Pipeline across the HCID#1

canal right-of-way, HCID#1 requested and obtained a hearing on its request for a temporary injunction against City to stop all construction including the continued installation of Bicentennial Boulevard.

- (b) Acting through one of its attorneys, HCID#1 offered to withdraw its request for an injunction to stop construction of Bicentennial Boulevard and to grant City an easement for that roadway if City would dismiss or nonsuit its third party claim against HCWID#3 and agree to a temporary injunction prohibiting construction of the HCWID#3 Pipeline across HCID#1's canal right-of-way.
- (c) HCID#1 agreed to cancel the temporary injunction hearing, withdraw its request to enjoin construction of Bicentennial Boulevard, and grant City an easement for Bicentennial Boulevard to cross its canal right-of-way in exchange for City's reversal of its approval of the Change Order and its rejection and denial of the Change Order.
- (d) Only after City rejected and denied the Change Order, effectively stopping completion of the HCWID#3 Pipeline, HCID#1 executed the *Easement in Gross Agreement* granting City a right-of-way easement for Bicentennial Boulevard to cross HCID#1's canal right-of-way.
- (e) As a condition of executing the *Easement in Gross Agreement*, HCID#1 required, and City and HCID#1 agreed, that it would include language that (i) relocates the eastern boundary of the Bicentennial Boulevard right-of-way and easement property to exclude the easement for HCWID#3's Pipeline as described in the HCWID#3 ROW Easement and in the HCWID#3 Condemned ROW Easement, and (ii) prohibiting installation of any underground structure in the easement property and under HCID#1's siphons in the absence of a court order or an agreement between City and HCID#1.

7.

HCWID#3 CROSS-CLAIM AGAINST HCID#1

7.1 HCWID#3 re-alleges those factual matters set out in the foregoing paragraphs, including specifically Paragraphs 3.1 through 3.3 and 4.1 through 4.22, and incorporates each of them by reference as though fully repleaded herein.

Action for Tortious Interference

7.2 On or about August 28 and 29, 2019, HCWID#3 and City executed and entered into the McAllen-HCWID#3 Agreement and the HCWID#3 ROW Easement (said agreements being collectively referred to herein as the “Pipeline Contracts”). HCID#1 had knowledge of both of the Pipeline Contracts and was opposed to the objective of the Pipeline Contracts which was to accomplish the construction of the extension of the HCWID#3 Pipeline.

7.3 HCID#1’s purpose and intention were and are to prevent the construction of the extension of the HCWID#3 Pipeline by preventing the crossing of the Pipeline under HCID#1’s canal right-of-way. To accomplish that purpose, HCID#1 willfully and intentionally interfered with the Pipeline Contracts and induced City to breach and violate the Pipeline Contracts by doing the following:

- (a) HCID#1 refused to issue HCWID#3 a permit to construct its Pipeline across and under HCID#1’s canal and canal right-of-way claiming that their engineer had concerns when the actual reason was HCID#1’s desire to avoid any competition with HCWID#3 for customers.
- (b) HCID#1 filed its original petition in this suit against City claiming that the City’s execution of the Pipeline Contracts is a breach of the 2017 *Interlocal Cooperation Agreement* between City and HCID#1 and threatening to seek a temporary injunction prohibiting City from beginning any work to install the HCWID#3 Pipeline.
- (c) Acting through its engineer, HCID#1 requested and recommended modifications to the design and construction plans for the crossing of the HCWID#3 Pipeline under the HCID#1 canal right-of-way to address the claimed engineering concerns. After HCWID#3 agreed to make those modifications and City’s engineers approved those modified plans, HCID#1 refused to accept the changes and issue a crossing permit to HCWID#3.
- (d) On or about May 22, 2020, HCID#1 delivered a letter to City and its Public Utility Board objecting to “McAllen’s proposed irrigation pipeline crossing of our East Main Canal at Bicentennial” and reminding that the McAllen Public Utility Board urged HCID#1 to deny HCWID#3 a crossing permit.



- (e) On or about June 1, 2020, acting through one of its attorneys, HCID#1 caused a letter to be delivered to TCC (i) prohibiting TCC and its agents and subcontractors from entering HCID#1's canal right-of-way to install paving (*i.e.*, Bicentennial Boulevard) or to construct any other improvements (*i.e.*, the HCWID#3 Pipeline) and (ii) threatening TCC with the possibility of criminal Class B misdemeanor charges and claims of trespassing.
- (f) On or about June 1, 2020, HCID#1 filed its amended petition in this suit claiming that City has no right to construct either Bicentennial Boulevard or the HCWID#3 Pipeline across HCID#1's canal right-of-way and threatening to seek a temporary injunction against City to stop all construction on that property.
- (g) After City approved the Change Order which would have allowed TCC to proceed with construction of the HCWID#3 Pipeline across the HCID#1 canal right-of-way, HCID#1 requested and obtained a hearing on its request for a temporary injunction against City to stop all construction including the continued installation of Bicentennial Boulevard.
- (h) Acting through one of its attorneys, HCID#1 offered to withdraw its request for an injunction to stop construction of Bicentennial Boulevard and to grant City an easement for that roadway if City would dismiss or nonsuit its third party claim against HCWID#3 and agree to a temporary injunction prohibiting construction of the HCWID#3 Pipeline across HCID#1's canal right-of-way.
- (i) HCID#1 agreed to cancel the temporary injunction hearing, withdraw its request to enjoin construction of Bicentennial Boulevard, and grant City an easement for Bicentennial Boulevard to cross its canal right-of-way in exchange for City's reversal of its approval of the Change Order and its rejection and denial of the Change Order.
- (j) Only after City rejected and denied the Change Order, effectively stopping completion of the HCWID#3 Pipeline, HCID#1 executed the *Easement in Gross Agreement* granting City a right-of-way easement for Bicentennial Boulevard to cross HCID#1's canal right-of-way.
- (k) As a condition of executing the *Easement in Gross Agreement*, HCID#1 required it to include language that (i) relocates the eastern boundary of the Bicentennial Boulevard right-of-way and easement property to exclude the easement for HCWID#3's Pipeline as described in the HCWID#3 ROW Easement and in the HCWID#3 Condemned ROW Easement, and

(ii) prohibiting installation of any underground structure in the easement property and under HCID#1's siphons in the absence of a court order or an agreement between City and HCID#1.

7.4 To date, HCWID#3 has performed all of its obligations under the Pipeline Contracts; however, future performance will be prevented as the result of HCID#1's own conduct as described above, as well as its conduct in concert and conspiracy with City, and City's breach of the Pipeline Contracts including but not limited to the rejection of the Change Order and refusal to allow completion of the HCWID#3 Pipeline.

7.5 As the proximate result of HCID#1's acts, HCWID#3 has (i) suffered damages and financial harm from HCID#1's interference and the resulting breach of the Pipeline Contracts and (ii) lost the benefits expected to be received from those Pipeline Contracts if City had performed as promised and if HCWID#3 were allowed to complete the construction of the extension of its Pipeline. In this connection, HCWID#3 alleges and will show that it has (i) reduced the sales price of the 2.53 acres sold to City by \$309,000 as consideration for an easement which has been rendered worthless by City, (ii) spent or obligated itself to spend approximately \$780,000 for specially manufactured PVC pipe for which HCWID#3 will no longer have any use, (iii) spent yet to be determined amounts for engineering services in connection with the Pipeline, (iv) spent yet to be determined amounts for legal services in connection with the agreements between HCWID#3 and City, the Pipeline, and the eminent domain proceeding against HCID#1, (v) incurred court costs, fees for special commissioners, compensation deposit, and appraisal fees in connection with the eminent domain proceeding against HCID#1, (vi) incurred bank charges for the issuance of an \$800,000 letter of credit, (vii) incurred obligations for a yet to be determined portion of the approximately \$679,000 attributable to the Pipeline and owed to TCC for work and materials

which will no longer be of any use or benefit to HCWID#3, and (viii) the loss of future income which would have been realized from customers and water districts to be served by HCWID# using the capacity of the Pipeline extension.

WHEREFORE, PREMISES CONSIDERED, and for the reasons pleaded above, HCWID#3 respectfully prays that this honorable Court:

(1) After notice and an evidentiary hearing, issue a temporary injunction restraining and enjoining City and HCID#1, together with their respective officers, employees, and agents, from taking any actions to directly or indirectly prohibit or prevent HCWID#3 or TCC from constructing HCWID#3's Pipeline in the easement property described in the HCWID#3 ROW Easement or in the right-of-way of the extension of Bicentennial Boulevard, including in the easement property described in the *Easement in Gross Agreement*, and in the HCID#1 canal right-of-way and that this honorable Court mandate and order City, together with its officers, employees, and agents, to approve the Change Order and comply with City's obligations under the McAllen-HCWID#3 Agreement and the HCWID#3 ROW Easement. HCWID#3 further requests that, after hearing, this honorable Court temporarily enjoin City, together with its officers, employees, and agents, from continuing construction of Bicentennial Boulevard north of the northern boundary of HCID#1's canal right-of-way pending final disposition of this suit.

(2) After trial on the merits, enter a judgment permanently restraining and enjoining City and HCID#1, together with their respective officers, employees, and agents, from taking any actions to directly or indirectly prohibit or prevent HCWID#3 or TCC from installing, constructing, operating, maintaining, replacing, repairing, upgrading, or removing HCWID#3's Pipeline in the easement property described in the HCWID#3 ROW Easement or in the right-of-


way of the extension of Bicentennial Boulevard, including in the easement property described in the *Easement in Gross Agreement*, and in the HCID#1 canal right-of-way and that this honorable Court enter a judgment mandating and ordering City, together with its officers, employees, and agents, to approve the Change Order and such other change orders as may be reasonably necessary to allow completion of HCWID#3's Pipeline, including but not limited to the crossing under HCID#1's canal right-of-way, and to comply with City's obligations under the McAllen-HCWID#3 Agreement and the HCWID#3 ROW Easement. HCWID#3 further requests that, after hearing, this honorable Court temporarily enjoin City, together with its officers, employees, and agents, from continuing construction of Bicentennial Boulevard north of the northern boundary of HCID#1's canal right-of-way pending final disposition of this suit.;

- (3) After trial on the merits, enter a judgment against City:
  - (a) Awarding to HCWID#3 its reasonable attorney's fees and other costs incurred in connection with the prosecution of this counterclaim for injunctive relief and enforcement of the HCWID#3 ROW Easement;
  - (b) Alternatively, awarding to HCWID#3 its damages resulting from City's breaches of the McAllen-HCWID#3 Agreement and the HCWID#3 ROW Easement;
  - (c) Awarding to HCWID#3 its reasonable attorney's fees and other costs incurred in connection with the prosecution of this counterclaim for breaches of the McAllen-HCWID#3 Agreement and the HCWID#3 ROW Easement;

- (d) Awarding to HCWID#3 its damages resulting from City's conspiracy with HCID#1 to commit tortious interference with the Pipeline Contracts;
  - (e) Prejudgment interest as provided by law;
  - (f) Post judgment interest as provided by law; and
  - (g) Such other and further relief against City to which HCWID#3 may be justly entitled at law or in equity.
- (4) After trial on the merits, enter a judgment against HCID#1:
- (a) Awarding to HCWID#3 its damages resulting from HCID#1's acts and omissions as alleged herein;
  - (b) Prejudgment interest as provided by law;
  - (c) Post judgment interest as provided by law; and
  - (d) Such other and further relief against HCID#1 to which HCWID#3 may be justly entitled at law or in equity.


Respectfully submitted,

**JACKSON WALKER L.L.P.**  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
(512) 236-2000  
Fax (512) 236-2002  
Email - [banderson@jw.com](mailto:banderson@jw.com)

By:   
\_\_\_\_\_  
W. Brad Anderson  
State Bar No. 24055106

**RANDOLPH KIMBLE WHITTINGTON**  
Attorney at Law  
2014 East Harrison Avenue

Harlingen, Texas 78550  
(956) 423-7200  
Fax (956) 423-7999  
Email - [chagofuentes@rkwlaw.com](mailto:chagofuentes@rkwlaw.com)

By:   
\_\_\_\_\_  
R. K. Whittington  
State Bar No. 21404500


Attorneys for Third Party Defendant /  
Counter-Plaintiff / Cross-Plaintiff Hidalgo  
County Water Improvement District No. 3

Certificate of Service

I, R. K. Whittington, do hereby certify that a true and correct copy of the foregoing *Hidalgo County Water Improvement District No. 3's Counterclaim against City of McAllen and Cross-Claim against Hidalgo County Irrigation District No. 1* was served on the person or persons identified below, being the duly authorized attorney(s) of record for each of the parties in the above styled and numbered cause, on June 30, 2020, and in accordance with Rule 21a, *Texas Rules of Civil Procedure*, for electronically filed documents, by electronic service through the electronic filing manager if the email address of the party or attorney to be served is on file with the electronic filing manager:

Mr. Kevin Pagan  
via email - [kpagan@mcallen.net](mailto:kpagan@mcallen.net)  
Mr. Isaac Tawil  
via email - [itawil@mcallen.net](mailto:itawil@mcallen.net)  
Mr. Austin W. Stevenson  
via email - [astevenson@mcallen.net](mailto:astevenson@mcallen.net)  
City of McAllen  
1300 Houston  
McAllen, Texas 78501

Mr. Daniel G. Gurwitz  
via email - [dgurwitz@atlashall.com](mailto:dgurwitz@atlashall.com)  
818 Pecan  
McAllen, Texas 78501

  
\_\_\_\_\_  
R. K. Whittington



\*VG-120-2020-3121836\*

Hidalgo County  
Arturo Guajardo Jr.  
County Clerk  
Edinburg, Texas 78540

Document No: 3121836

Billable Pages: 9

Recorded On: June 17, 2020 03:37 PM

Number of Pages: 10

\*\*\*\*\*Examined and Charged as Follows\*\*\*\*\*

Total Recording: \$ 68.00

\*\*\*\*\*THIS PAGE IS PART OF THE DOCUMENT\*\*\*\*\*

Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document No: 3121836  
Receipt No: 20200617000300  
Recorded On: June 17, 2020 03:37 PM  
Deputy Clerk: Elaine Acuna  
Station: Mcallen-CC-K24

**Record and Return To:**

City of McAllen / Sylvia Hernandez  
1300 W Houston  
original returned to customer  
MCALLEN TX 78501



STATE OF TEXAS  
COUNTY OF HIDALGO

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Hidalgo County, Texas.

Arturo Guajardo Jr.  
County Clerk  
Hidalgo County, Texas

EXHIBIT A



## **Easement in Gross Agreement**

**Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.**

Date: June 15, 2020

Grantor: Hidalgo County Irrigation District No. One

Grantor's Mailing Address:

P.O. Box 870  
Edinburg, Hidalgo County, Texas 78540

Grantee: The City of McAllen

Grantee's Mailing Address:

P.O. Box 220  
McAllen, Hidalgo County, Texas 78501

**Easement Property:** All of the property as described in Exhibit A and Exhibit B, attached hereto and incorporated herein, and as much of the remainder of Grantor's Property as may be reasonably necessary for ingress and egress by Grantee, its employees, agents, and contractors to and from the Easement Property, to construct, install, operate, maintain, inspect, repair, and replace the Facilities, ONLY to the extent that the Easement Property is not accessible by using existing rights-of-way, streets, roads, driveways, and parking areas to the maximum extent reasonably possible.

**Easement Purpose:** For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of the road, sidewalks, curb and gutter, commonly known as the Bicentennial Boulevard project (collectively, the "Facilities"). Absent a court order or written agreement between the Parties, installation of any pipeline or any underground facility on, in or under the Grantor's siphon is specifically excluded. In the event Grantee installs or allows the installation of any pipeline or underground infrastructure on, in or under Grantor's siphon, the Easement granted here is immediately extinguished and thereafter null and void ab initio.

**Consideration:** Good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor.

**Reservations from Conveyance:** None.



Exceptions to Warranty: Notwithstanding anything herein to the contrary, the Holder acknowledges that Grantor is making no warranties or covenants regarding title to the Property and that all covenants and/or warranties that might arise by contract, statute or common law (including but not limited to the covenant of seisin) as well as the warranties in section 5.023 of the Texas Property Code (or its successors) are excluded.

Grant of Easement: Grantor, for the Consideration and subject to the Reservations from Conveyance and Exceptions to Warranty, grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever.

Terms and Conditions: The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement and related rights granted by Grantor in this agreement to Grantee are an exclusive easement in gross for the benefit of Grantee and its successors and assigns, as owner of the rights created by the Easement in gross, and is exclusive (as applicable, the "Holder"). The Easement and related rights granted by Grantor in this agreement are binding on Grantor; on the Grantor's heirs, legal representatives, successors, and assigns; and on all future owners of the Easement Property. This Easement and other rights granted by Grantor in this agreement are independent of any lands or estates of interest in lands; there is no other real property benefitting from the Easement granted in this agreement.

2. *Assignment.* Grantee may assign, sublease, license, transfer, or convey its interest in this agreement or any part of its interest in the Easement without Grantor's consent, provided that the assignee or transferee shall be subject to all of the obligations, covenants, and conditions applicable to Grantee.

3. *Duration of Easement.* The duration of the Easement is perpetual.

4. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property and the Facilities will be at the sole expense of Holder. Holder has the right to eliminate any encroachments into the Easement Property that interfere with the Easement Purpose. Holder must maintain the Easement Property in a neat and clean condition. Holder has the right to construct, install, maintain, replace, and remove the Facilities on or across any portion of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Holder's sole discretion, subject to performance of Holder's obligations under this agreement. Holder has the right to remove or relocate any fences within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities, subject to replacement of the fences to their original condition on the completion of the work. Holder agrees that any damage to Grantor's siphon caused by the installation or maintenance of the road by or at the direction of Holder will be repaired at the expense of the Holder.



5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other costs.

7. *Binding Effect.* This agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns.

8. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

9. *Counterparts.* This agreement may be executed in multiple counterparts. All counterparts taken together constitute this agreement.

10. *Waiver of Default.* A default is not waived if the nondefaulting party fails to declare default immediately or delays in taking any action with respect to the default. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

11. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

12. *Indemnity.* To the extent allowed by law, each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this agreement by the indemnifying party. The obligations of the parties under this provision will survive termination of this agreement.

13. *Survival.* The obligations of the parties in this agreement that cannot be or were not performed before termination of this agreement survive termination of this agreement.

14. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property and the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of the other party or any agent of the other party, that are not expressly set forth in this agreement and any exhibits.

15. *Legal Construction.* If any provision in this agreement is unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

16. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be given (whether received or not) the earlier of receipt or three business days after being deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, or e-mail and will be effective when received. Any address for notice may be changed by written notice given as provided herein.

**HIDALGO COUNTY IRRIGATION  
DISTRICT NO. ONE**

By: Robert L. Bell, Jr.  
Robert L. Bell, Jr., President

**THE CITY OF MCALLEN**

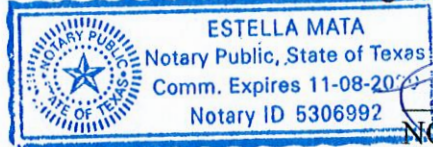
By: Roy Rodriguez  
Roy Rodriguez, City Manager



ACKNOWLEDGMENTS

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF HIDALGO   §

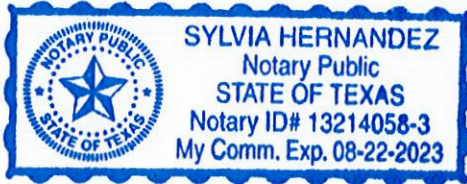
This instrument was acknowledged before me on June 17, 2020,  
by Robert L. Bell, Jr., as President of Hidalgo County Irrigation District No. One.



Estella Mata  
NOTARY PUBLIC, STATE OF TEXAS

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF HIDALGO   §

This instrument was acknowledged before me on June 17, 2020,  
by Roy Rodriguez, as City Manager for the City of McAllen.



Sylvia Hernandez  
NOTARY PUBLIC, STATE OF TEXAS

Revised June 15, 2020  
**METES AND BOUNDS DESCRIPTION**  
**0.40 ACRES OF LAND OUT OF**  
**LOT 9 SECTION 279 TEXAS-MEXICAN**  
**RAILWAY COMPANY SURVEY**  
**HIDALGO COUNTY, TEXAS**



Job No. 200606  
0.40 acres of land  
Sheet No.: 1 of 2

LLC

A tract of land containing 0.40 acres of land, more or less, situated in Hidalgo County, Texas, being part or portion of **LOT 9 SECTION 279, and LOT 12 SECTION 278, TEXAS-MEXICAN RAILWAY COMPANY SURVEY**, Hidalgo County, Texas, map reference: Volume 24 Page 168 Deed Records, Hidalgo County, Texas, and said 0.40 acres also being more particularly described as follows;

**COMMENCING** for reference at the southeast corner of Lot 1, Southwest Elementary School Subdivision map reference: Volume 33 Page 62 Map Records, Hidalgo County, Texas, **THENCE** S 56° 29' 21" E, along the north right-of-way line of said Hidalgo County Irrigation District No. 1 Main Canal, a distance of 65.25 feet to a ½" iron rod with a plastic cap stamped "CVQ LS" set, on a curve to the right and the proposed west right-of-way line of Bicentennial Boulevard, for the **POINT OF BEGINNING**, and the Northwest corner of this tract;

**THENCE** S 56° 29' 21" E, continuing along the north right-of-way line of said Hidalgo County Irrigation District No. 1 Main Canal, and the south line of said Southwest Elementary School Subdivision, at a distance of 50.12 feet pass the southeast corner of said Southwest Elementary School Subdivision, the southwest corner of a tract of land deeded to The City of McAllen recorded in Document Number 1838944 Deed Records, Hidalgo County, Texas, continuing a total distance of 87.45 feet to a ½" iron rod with a plastic cap stamped "CVQ LS" set on a curve to the right and the proposed east right-of-way line of said Bicentennial Boulevard, for the Northeast corner hereof;

**THENCE** in a southwesterly direction along said curve to the right and the proposed east right-of-way line of said Bicentennial Boulevard a distance of 204.50 feet, said curve having a radius of 4094.84 feet, a delta angle of 02° 51' 41", a tangent of 102.27, and a chord that bears S 21° 30' 08" W 204.47 feet, to a ½" iron rod with a plastic cap stamped "CVQ LS" on the south right-of-way line of said Hidalgo County Irrigation District No. 1 Main Canal, for the Southeast corner hereof;

**THENCE** N 56° 29' 21" W, along the south right-of-way line of said Hidalgo County Irrigation District No. 1 Main Canal, a distance of 86.50 feet, to a ½" iron rod with a plastic cap stamped "CVQ LS" set on a curve to the left and the proposed west right-of-way line of said Bicentennial Boulevard, for the Southwest corner hereof;

**THENCE** in a northeasterly direction along said curve to the left and the proposed west right-of-way line of said Bicentennial Boulevard a distance of 204.70 feet, said curve having a radius of 4009.84 feet, a delta angle of 02° 55' 29", a tangent of 102.37, and a chord that bears N 21° 14' 36" E 204.67 feet, to the **POINT OF BEGINNING**, containing 0.40 acres of land, more or less.

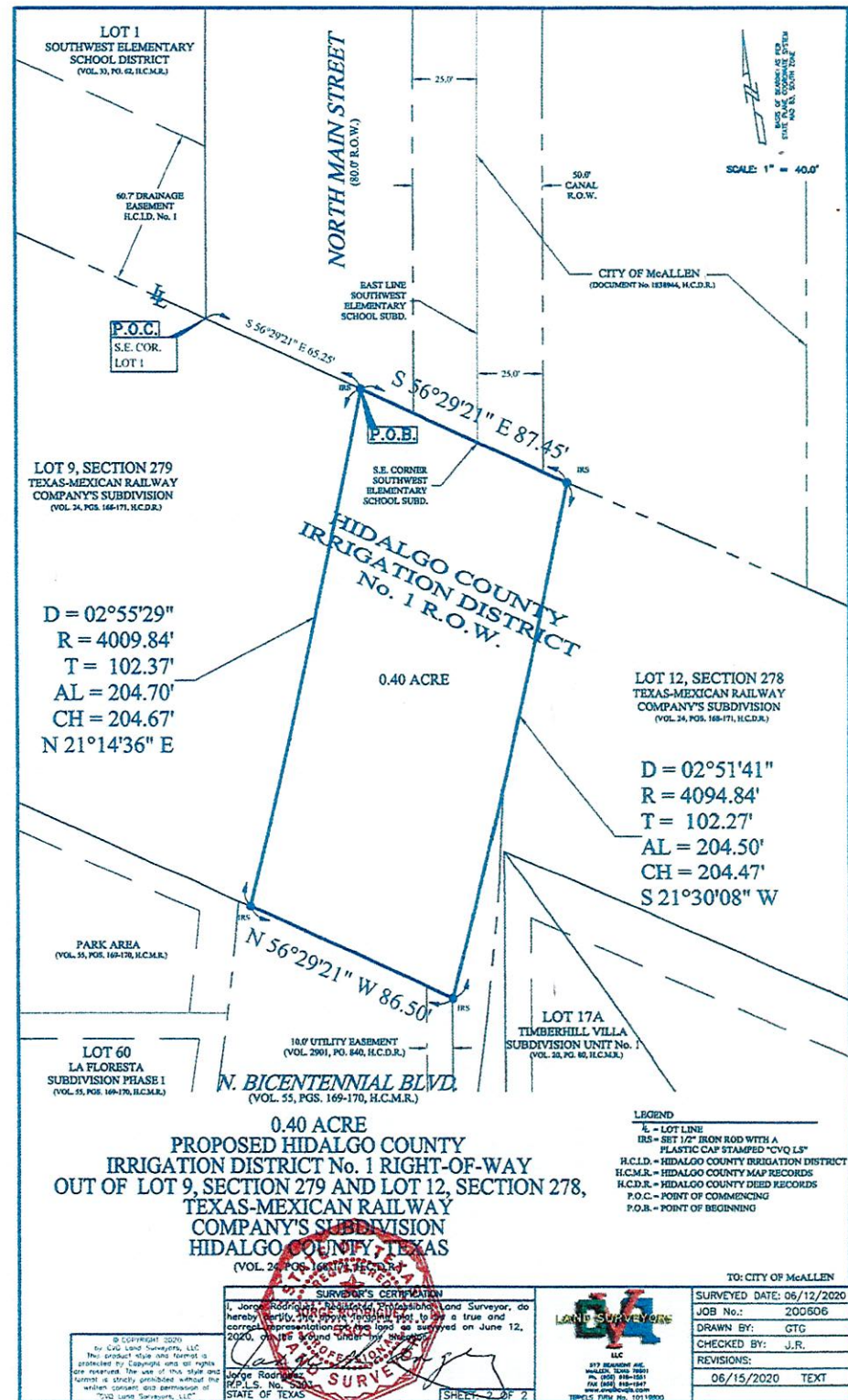
Bearing basis as per **TEXAS STATE PLANE COORDINATES SYSTEM NAD 1983, South Zone.**  
**THE ABOVE DESCRIPTION WAS SURVEYED ON THE GROUND UNDER MY DIRECTION**  
**ON JUNE 12, 2020.**

  
Jorge Rodriguez, R.P.L.S. No. 5303  
CVQ Land Surveyors, LLC  
T.B.P.E.L.S. Firm No. 10119600

P.O. Box 5066 • McALLEN, TEXAS 78502 • PHONE (956) 618-1551 • FAX (956) 618-1547

EXHIBIT A





Revised August 26, 2019  
**METES AND BOUNDS DESCRIPTION**  
**0.57 ACRES OF LAND OUT OF**  
**SOUTHWEST ELEMENTARY SCHOOL**  
**SUBDIVISION,**  
**HIDALGO COUNTY, TEXAS**



Job No. 190524  
0.57 acres of land  
Sheet No.: 1 of 2

A tract of land containing 0.57 acres of land, more or less, situated in Hidalgo County, Texas, being part or portion of **SOUTHWEST ELEMENTARY SCHOOL SUBDIVISION**, Hidalgo County, Texas, map reference: Volume 33, Page 62, Map Records, Hidalgo County, Texas, and said 0.57 acres also being more particularly described as follows;

**COMMENCING** for reference at the southeast corner of Lot 1, of said Southwest Elementary School Subdivision, and the northerly right-of-way line of Hidalgo County Irrigation District No. 1, Main Canal (with varies), **THENCE** S 56° 28' 52" E along the south line of said Southwest Elementary School Subdivision, and the northerly right-of-way of said Hidalgo County Irrigation District No. 1, a distance of 87.92 feet, to a 1/2" iron rod with plastic cap stamped "CVQ LS" set on the west right-of-way of a 25 foot Hidalgo County Irrigation District No. 1 canal, as shown on said Southwest Elementary School Subdivision, and the easterly right-of-way line of North Main Street (80.0 foot right-of-way), as shown on said Southwest Elementary School Subdivision, for the **POINT OF BEGINNING**, and the Southwest corner of this tract;

**THENCE** N 09° 00' 44" E, along the west right-of-way line of said 25 foot canal and the east line of said North Main Street, a distance of 1004.04 feet, to a 1/2" iron rod with plastic cap stamped "CVQ LS", set on a corner clip of Bicentennial Boulevard right-of-way, recorded in Document Number 1838944, Deed Records, Hidalgo County, Texas, for the Northwest corner hereof;

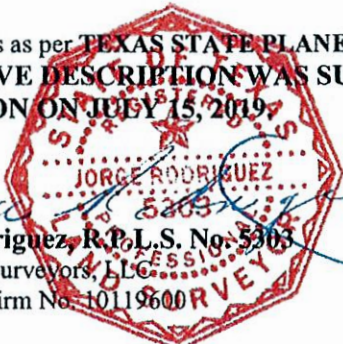
**THENCE** S 36° 01' 37" E, continuing along the westerly right-of-way line of said Bicentennial Boulevard, a distance of 35.33 feet, to a corner clip and the west right-of-way line of said Bicentennial Boulevard, for the Northeast corner hereof;

**THENCE** S 09° 00' 44" W, continuing along the west right-of-way line of said Bicentennial Boulevard, a distance of 990.41 feet, to a 1/2" iron rod with plastic cap stamped "CVQ LS" set on the southeast corner of said Southwest Elementary School Subdivision, for the Southeast corner hereof;

**THENCE** N 56° 35' 22" W, continuing along the south line of said Southwest Elementary School Subdivision, and the northerly right-of-way line of said Hidalgo County Irrigation District No. 1 canal, a distance of 27.45 feet, to the **POINT OF BEGINNING**, containing 0.57 acres of land, more or less.

Bearing basis as per **TEXAS STATE PLANE COORDINATES SYSTEM NAD 1983, South Zone.**  
**THE ABOVE DESCRIPTION WAS SURVEYED ON THE GROUND UNDER MY**  
**DIRECTION ON JULY 15, 2019.**

  
**Jorge Rodriguez, R.T.L.S. No. 5303**  
CVQ Land Surveyors, LLC  
T.B.P.L.S. Firm No. 10119600



P.O. Box 5066 • McALLEN, TEXAS 78502 • PHONE (956) 618-1551 • FAX (956) 618-1547



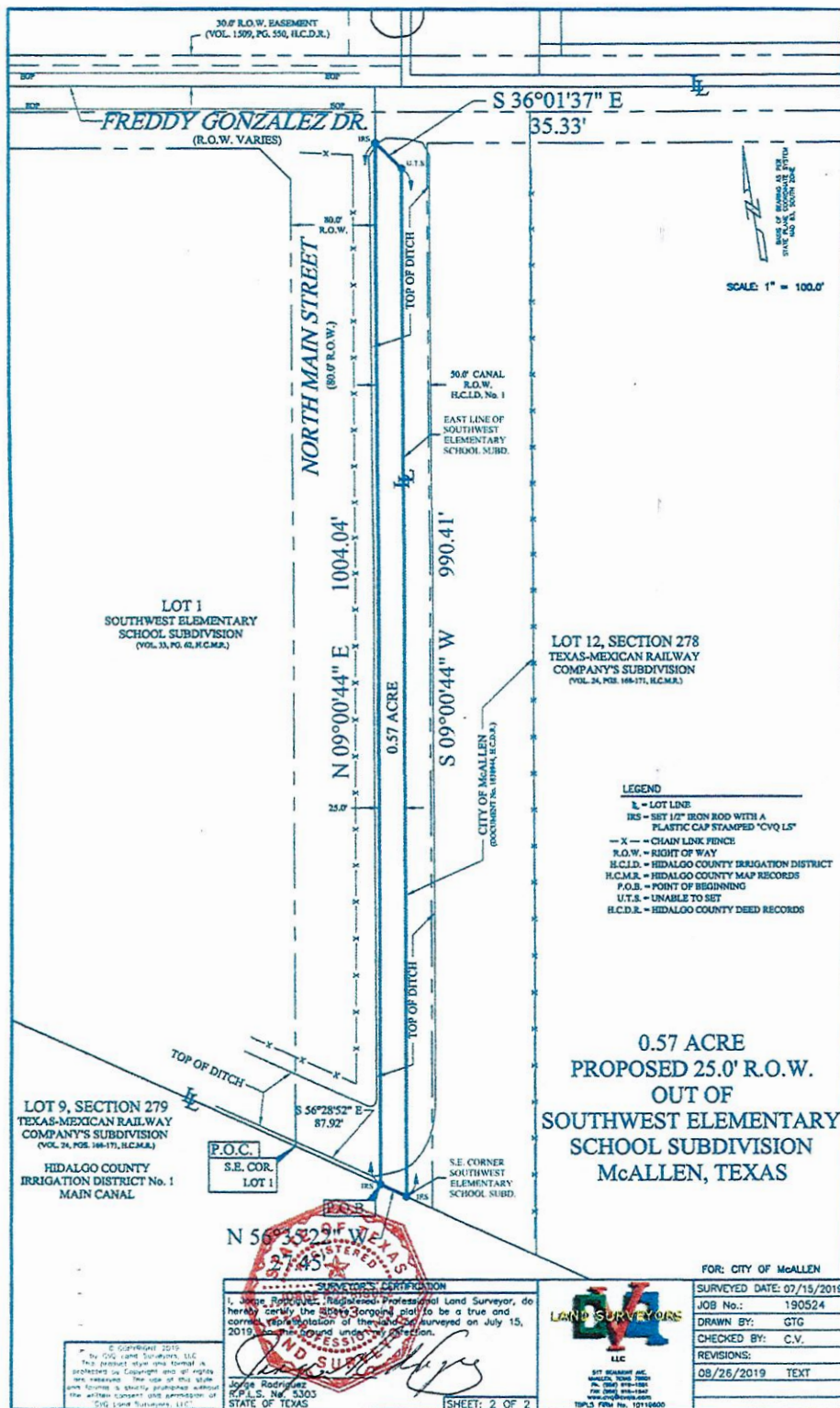


EXHIBIT A



Hidalgo County  
Arturo Guajardo Jr.  
County Clerk  
Edinburg, Texas 78540

Document No: 3044049

Billable Pages: 9

Recorded On: August 29, 2019 05:02 PM

Number of Pages: 10

\*\*\*\*\*Examined and Charged as Follows\*\*\*\*\*

Total Recording: \$ 68.00

\*\*\*\*\*THIS PAGE IS PART OF THE DOCUMENT\*\*\*\*\*

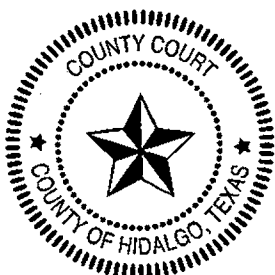
Any provision herein which restricts the Sale, Rental, or use of the described REAL PROPERTY  
because of color or race is invalid and unenforceable under federal law.

**File Information:**

Document No: 3044049  
Receipt No: 20190829000462  
Recorded On: August 29, 2019 05:02 PM  
Deputy Clerk: Imelda Leal  
Station: CH-1-CC-K27

**Record and Return To:**

Simplifile  
5072 North 300 West  
  
PROVO UT 84604



STATE OF TEXAS  
COUNTY OF HIDALGO

I hereby certify that this Instrument was FILED in the File Number sequence on the date/time  
printed hereon, and was duly RECORDED in the Official Records of Hidalgo County, Texas.

Arturo Guajardo Jr.  
County Clerk  
Hidalgo County, Texas

EXHIBIT B

## **Easement Agreement**

**Date:** Effective as of August 8, 2019

**Grantor:** City of McAllen, Texas, a Texas home rule city

**Grantor's Mailing Address:**

City of McAllen  
Attn: City Attorney's Office  
McAllen City Hall  
1300 Houston Avenue  
McAllen, Texas 78501  
(Hidalgo County)

**Grantee:** Hidalgo County Water Improvement District Number Three, a political subdivision of the State of Texas

**Grantee's Mailing Address:**

Hidalgo County Water Improvement District Number Three  
1325 W. Pecan Boulevard  
McAllen, Texas 78501  
(Hidalgo County)

**Grantor's Property:** The property described as (i) a segment (the "South Segment") the width of the right-of-way of Bicentennial Boulevard from a point north of Trenton Road on the south to the north right-of-way line of the Hidalgo County Irrigation District No. 1 main canal, and (ii) a segment (the "North Segment") the width from the east right-of-way line of Bicentennial Boulevard to the top of the westernmost bank of Grantor's drainage ditch along and parallel to the west right-of-way line of Bicentennial Boulevard, said segment being from the north right-of-way line of the Hidalgo County Irrigation District No. 1 main canal on the south to the intersection of the Bicentennial Boulevard right of way with State Highway 107 on the north.

**Easement Property:** A strip of land ten feet (10') in width consisting of two segments, the first of which segments (the "South Easement Segment") is located in the South Segment of Grantor's Property and is five feet (5') on either side of a centerline described in Exhibit A attached hereto and incorporated herein, and the second of which segments (the "North Easement Segment") is ten feet (10') in width, is in the North Segment of Grantor's Property, begins at the northernmost point of said centerline described in Exhibit A and ends at the intersection of the

Bicentennial Boulevard right-of-way with State Highway 107, and is located between the tops of the east and west banks of Grantor's drainage ditch along and parallel to the west right-of-way line of Bicentennial Boulevard. Grantor and Grantee agree that (i) the Facilities in the North Easement Segment shall be installed and constructed along a route and in accordance with plans prepared by Grantee and reviewed and approved by Grantor's engineering department in accordance with Grantor's Right-of-Way Management Ordinance, (ii) once construction of Grantee's underground pipeline in the North Easement Segment has been completed, Grantee will cause a survey and metes and bounds description of the centerline of said pipeline to be prepared at Grantee's expense, (iii) thereafter, the North Easement Segment shall be the strip of land consisting of five feet (5') on either side of said surveyed and described centerline, and (iv) the parties shall record a modification of this Easement Agreement limiting the North Easement Segment to the five feet (5') on either side of the surveyed and described centerline and releasing the remainder of the North Segment of Grantor's Property from the easement granted herein. In addition to the foregoing property, the Easement Property shall also include as much of the remainder of Grantor's Property as may be reasonably necessary for ingress and egress by Grantee, its employees, agents, and contractors to and from the Easement Property, to construct, install, operate, maintain, inspect, repair, and replace the Facilities, but ONLY to the extent that the Easement Property is not accessible by using existing rights-of-way, streets, roads, driveways, and parking areas to the maximum extent reasonably possible.

**Easement Purpose:** For the installation, construction, operation, maintenance, replacement, repair, upgrade, and removal of an underground 48" pipeline transporting raw water, air release valves, and other equipment required for operation of pipeline (collectively, the "Facilities").

**Consideration:** Grantor grants the easement herein in consideration of Grantee's agreement (i) pursuant to Section 49.226(a), *Texas Water Code*, to declare a 2.538-acre tract of land as surplus property not needed by Grantee and (ii) to sell said 2.538-acre tract to Grantor for like fair market value as determined by Grantee's board of directors, all as set forth in said board's Resolution originally adopted on August 8, 2019 and subsequently amended by said board's Resolution adopted on August 21, 2019.

**Reservations from Conveyance:** Grantor, as owner of Grantor's Property, and for the benefit of previous and any subsequent grantees of Grantor, reserves the right to use all or part of the Easement Property in conjunction with Grantee, as long as such further uses and/or conveyances are subject to the terms of this agreement and do not prevent, interfere with, or adversely affect Grantee's use of the Easement Property for the Easement Purpose.

**Exceptions to Warranty:** Validly existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil and gas leases, mineral interests, and water interests outstanding in persons other than Grantor, and other instruments that affect the Easement Property; and, until acquired, those sections of the Easement Property to which Grantor, as of the date hereof, has yet to acquire title through either consensual sales or eminent domain proceedings (the "Unacquired Properties").

**Grant of Easement:** Grantor, for the Consideration as described herein and subject to the

Reservations from Conveyance and Exceptions to Warranty, (i) consents pursuant to Section 552.103, *Texas Local Government Code*, to the use of the Easement Property for the Easement Purposes, and (ii) grants, sells, and conveys to Grantee and Grantee's heirs, successors, and assigns an easement over, on, and across the Easement Property for the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the "Easement"), to have and to hold the Easement to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs, successors, and assigns to warrant and forever defend the title to the Easement in Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part thereof, except as to the Reservations from Conveyance and Exceptions to Warranty, to the extent that such claim arises by, through, or under Grantor but not otherwise; provided, however, that Grantor shall not have breached its special warranty of title with respect to the Unacquired Properties from the date hereof until Grantor acquires title to the Unacquired Properties; as and when Grantor acquires sections of the Unacquired Properties, the parties intend that this Easement attach to such sections, and the special warranty provided herein shall then apply to such sections of the Unacquired Property. This conveyance is intended to include any property interests obtained by after-acquired title.

With respect only to construction plans for Facilities submitted by Grantee to Grantor's engineering department as of the date of execution of this Easement Agreement for the construction of Facilities in the South Easement Segment, Grantor and Grantee agree: (i) that the execution of this Easement Agreement and the granting of the Easement herein satisfy the requirements for registration of Grantee and engineering department review and approval set out in Grantor's Right-of-Way Management Ordinance (Ord. No. 2002-03, § 1, 1-14-02, as amended; McAllen City Ordinances, Chapter 94, Article II); (ii) if applicable, this Easement is deemed by Grantor to satisfy any requirement under said Ordinance to apply for and obtain a permit to construct the Facilities; and (iii) that Grantor waives, and Grantee shall not be required to pay to Grantor, any annual or other fees which might otherwise be required by Grantor pursuant to said Right-of-Way Management Ordinance or otherwise.

**Terms and Conditions:** The following terms and conditions apply to the Easement granted by this agreement:

1. *Character of Easement.* The Easement and related rights granted by Grantor in this agreement to Grantee are a nonexclusive and irrevocable easement in gross for the benefit of Grantee and its successors and assigns, as owner of the rights created by the Easement in gross (as applicable, the "Grantee"). In the event Grantor permits the installation of other underground utility lines, cables, pipelines, conduit, or other related facilities within the boundaries of the Easement Property after the review and approval by Grantor's engineering department of Grantee's Facilities, such facilities shall not be located directly above and parallel to Grantee's underground pipeline or in such other location which will prevent or hinder Grantee's construction and installation of or access to its pipeline and Grantee's ability to maintain, repair, replace, or remove its pipeline. Grantor shall require any such other utility facilities crossing above or running parallel to Grantee's Facilities reviewed and approved by Grantor's engineering department to have a minimum separation from Grantee's pipeline of twenty-four inches (24") measured from outside diameter to outside diameter. Grantor agrees to provide

Grantee with a copy of the plans of record for any underground utilities constructed in the Easement Property. The Easement and related rights granted by Grantor in this agreement are binding on Grantor, on the Grantor's heirs, legal representatives, successors, and assigns, and on all future owners of the Easement Property. This Easement and other rights granted by Grantor in this agreement are independent of any lands or estates of interest in lands; there is no other real property benefitting from the Easement granted in this agreement.

2. *Assignment.* Grantee may not assign, sublease, license, transfer, or convey its interest in this agreement or any part of its interest in the Easement without Grantor's prior, written consent, which shall not be unreasonably withheld.

3. *Duration of Easement.* The duration of the Easement is perpetual.

4. *Improvement and Maintenance of Easement Property.* Improvement and maintenance of the Easement Property will be at the sole expense of Grantor. Improvement and maintenance of the Facilities will be at the sole expense of Grantee. Grantee has the right to construct, install, maintain, replace, and remove the Facilities under the Easement Property. Grantee shall provide Grantor with prior, written notice of maintenance of the Easement Property that would interfere with Grantor's use of the Easement Property. All matters concerning the Facilities and their configuration, construction, installation, maintenance, replacement, and removal are at Grantee's sole discretion, subject to performance of Grantee's obligations under this agreement. Grantee has the right to remove or relocate any improvements, including sidewalks and surface sprinkling/grass irrigation systems, within the Easement Property or along or near its boundary lines if reasonably necessary to construct, install, maintain, replace, or remove the Facilities, and Grantee shall be responsible to maintain, restore or replace such improvements on the completion of Grantee's work as Grantor may determine in its best interest. In addition to the above, Grantee agrees, with respect to future work in connection with the Facilities, to comply with Grantor's Right-Of-Way Management Ordinance, other than the payment of annual or other fees which are waived by Grantor; provided, however, if there is a conflict between the terms and conditions of this Easement Agreement and the requirements or provisions of said ordinance, the terms and conditions of this Easement Agreement shall prevail. Notwithstanding the foregoing, unless caused by Grantee or resulting from a violation by Grantee of this Easement Agreement, any restoration, replacement, temporary removal or relocation of the Facilities resulting from actions by or requests from Grantor shall be the responsibility of Grantor and shall be at Grantor's expense.

5. *Equitable Rights of Enforcement.* This Easement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

6. *Attorney's Fees.* If either party retains an attorney to enforce this agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court and other

costs.

7. *Binding Effect.* This agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

8. *Choice of Law.* This agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

9. *Counterparts.* This agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.

10. *Waiver of Default.* It is not a waiver of or consent to default if the non-defaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this agreement does not preclude pursuit of other remedies in this agreement or provided by law.

11. *Further Assurances.* Each signatory party agrees to execute and deliver any additional documents and instruments and to perform any additional acts necessary or appropriate to perform the terms, provisions, and conditions of this agreement and all transactions contemplated by this agreement.

12. *Survival.* The obligations of the parties in this agreement that cannot be or were not performed before termination of this agreement survive termination of this agreement.

13. *Entire Agreement.* This agreement and any exhibits are the entire agreement of the parties concerning the Easement Property, and the grant of the Easement by Grantor to Grantee. There are no representations, agreements, warranties, or promises, and neither party is relying on any statements or representations of any agent of the other party, that are not in this agreement and any exhibits.

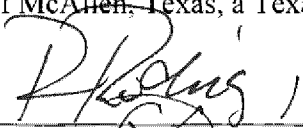
14. *Legal Construction.* If any provision in this agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this agreement will be construed as if the unenforceable provision had never been a part of the agreement. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this agreement are for reference only and are not intended to restrict or define the text of any section. This agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

15. *Notices.* Any notice required or permitted under this agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when

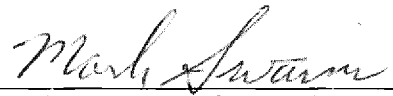
actually received. Any address for notice may be changed by written notice delivered as provided herein.

GRANTOR:

City of ~~McAllen~~, Texas, a Texas, a home rule city

  
 \_\_\_\_\_  
 Roel Rodriguez, P.A., M.P.A., City Manager

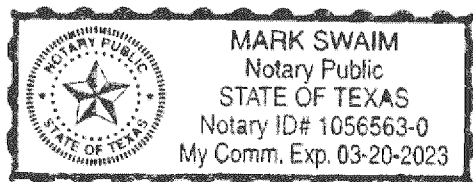
Approved as to Form:

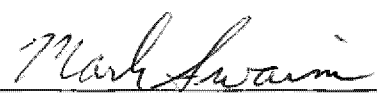
  
 \_\_\_\_\_  
 Mark Swaim, Assistant City Attorney

STATE OF TEXAS )

COUNTY OF HIDALGO )

This instrument was acknowledged before me on the 29 day of August, 2019, by Roel Rodriguez, P.A., M.P.A., City Manager of the City of McAllen, Texas, a Texas, a home rule city, on behalf of said home rule City.



  
 \_\_\_\_\_  
 Notary Public, State of Texas

Accepted by GRANTEE:

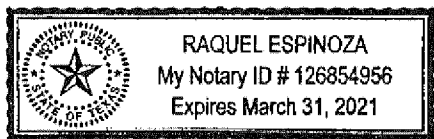
Hidalgo County Water Improvement District  
 Number Three, a Texas political subdivision

  
 \_\_\_\_\_  
 Othal E. Brand, Jr., President

STATE OF TEXAS )

COUNTY OF HIDALGO )

This instrument was acknowledged before me on the 28<sup>th</sup> day of August, 2019, by Othal E. Brand, Jr., President of Hidalgo County Water Improvement District Number Three, a Texas political subdivision, on behalf of said District.



Raquel Espinoza  
Notary Public, State of Texas

AFTER RECORDING RETURN TO:

R. K. Whittington  
Law Offices of Randolph Kimble Whittington  
2014 East Harrison Avenue  
Harlingen, Texas 78550



20 August 2019

**METES AND BOUNDS  
CENTERLINE OF 48-INCH IRRIGATION LINE TO  
HIDALGO COUNTY WATER IMPROVEMENT DISTRICT NO. 3**

Description of the centerline of the 48-inch irrigation pipe for the use of Hidalgo County Water Improvement District No. 3 to be within the following described centerline and within the proposed Right of Way of Bicentennial Boulevard; said centerline being more particularly described by metes and bounds as follows:

**COMMENCING** at the Southwest corner of Villa Norte No. 3 Subdivision, recorded in Volume 37, Page 163, Map Records of Hidalgo County, Texas; (Having Coordinate values of X = 1073770.0874 Y = 16625992.7727 of the Texas State Plane Coordinate System, South Zone, NAD 83)

**THENCE South 19 Deg. 15 Min. 40 Sec. West** a distance of **32.26 Feet** to the **POINT OF BEGINNING** of the centerline herein described; (Having coordinate values of X = 1073759.4445 Y = 16625962.3150 based on the Texas State Plane Coordinate System, South Zone, NAD83);

- 1) **THENCE North 08 Deg. 38 Min. 41 Sec. East** a distance of **248.00 Feet** to a point for a corner of the tract herein described;
- 2) **THENCE North 21 Deg. 52 Min. 45 Sec. East** a distance of **92.46 Feet** to the point of curvature of a curve to the Left, for an angle point of the tract herein described;
- 3) **THENCE** along said curve to the left with a radial bearing of North 70 Deg. 06 Min. 19 Sec. West, a radius of 984.36 Feet; having an Arc Length of 193.04 Feet; through a delta angle of 11 Deg. 14 Min. 11 Sec.; with a chord bearing of North 14 Deg. 16 Min. 36 Sec. East and a chord distance of 192.73 Feet to the point of tangency of said curve and an angle point of the tract herein described;
- 4) **THENCE North 08 Deg. 39 Min. 31 Sec. East** a distance of **1242.70 Feet** to the point for a corner of the tract herein described;
- 5) **THENCE** along said curve to the Right with a radial bearing of South 81 Deg. 20 Min. 29 Sec. East, a radius of 906.00; having an Arc Length of 747.90 Feet; through a delta angle of 47 Deg. 17 Min. 52 Sec.; with a chord bearing of North 32 Deg. 18 Min. 26 Sec. East and a chord distance of 726.85 Feet to the point of a reverse curve and an angle point of the tract herein described;
- 6) **THENCE** along said curve to the Left with a radial bearing of North 34 Deg. 02 Min. 38 Sec. West, a radius of 974.00; having an Arc Length of 298.85 Feet; through a delta angle of 17 Deg. 34 Min. 49 Sec.; with a chord bearing of North 47 Deg. 09 Min. 58 Sec. East and a chord distance of 297.68 Feet to the point of tangency of said curve and an angle point of the tract herein described;
- 7) **THENCE North 38 Deg. 22 Min. 34 Sec. East** a distance of **184.22 Feet** to the point of curvature of a curve to the left, for an angle point of the tract herein described;
- 8) **THENCE** along said curve to the Left with a radial bearing of North 51 Deg. 37 Min. 26 Sec. West, a radius of 583.99; having an Arc Length of 303.92 Feet; through a delta angle of 29 Deg. 49 Min. 04 Sec.; with a chord bearing of North 23 Deg. 28 Min. 02 Sec. East and a chord distance of 300.50 Feet to the point of tangency and an angle point of the tract herein described;
- 9) **THENCE North 08 Deg. 33 Min. 30 Sec. East** a distance of **869.59 Feet** to a point for a corner of the tract herein described;
- 10) **THENCE North 02 Deg. 41 Min. 30 Sec. West** a distance of **51.11 Feet** to a point for a corner of the tract herein described;

F:\0142 HCWID No. 3\142-040 Canal Survey North of Trenton\WB\Centerline Pipe.docx Page 1 of 2

20 August 2019  
Irrigation Pipe Centerline

- 11) **THENCE North 08 Deg. 33 Min. 30 Sec. East** a distance of **179.93 Feet** to a point for a corner of the tract herein described;
- 12) **THENCE North 2 Deg. 41 Min. 30 Sec. West** a distance of **102.52 Feet** to a the point of curvature of a curve to the Right, for an angle point of the tract herein described;
- 13) **THENCE** along a curve to the Right, having a radial bearing of South 81 Deg. 26 Min. 30 Sec. East, with a radius of 1496.00, having an Arc Length of 498.59 Feet; through a delta angle of 19 Deg. 05 Min. 44 Sec.; with a chord bearing of North 18 Deg. 06 Min. 22 Sec. East and a chord distance of 496.28 Feet to the point of tangency of said curve, for an angle point of the tract herein described;
- 14) **THENCE North 27 Deg. 39 Min. 15 Sec. East** a distance of **429.99 Feet** to the point of curvature of a curve to the left, for an angle point of the tract herein described;
- 15) **THENCE** along said curve to the Left, having a radial bearing of North 62 Deg. 20 Min. 45 Sec. West, with a radius of 5000.00 Feet, an Arc Length of 184.93 Feet, through a delta angle of 02 Deg. 07 Min. 09 Sec., with a chord bearing North 26 Deg. 35 Min. 40 Sec. East and a chord distance of 184.92 Feet to the point of tangency of said curve and an angle point of the tract herein described;
- 16) **THENCE North 25 Deg. 32 Min. 06 Sec. East** a distance of **120.34 Feet** to a point for a corner of the tract herein described;
- 17) **THENCE North 14 Deg. 17 Min. 06 Sec. East** a distance of **66.00 Feet** to a point for a corner of the tract herein described;
- 18) **THENCE North 25 Deg. 32 Min. 06 Sec. East** a distance of **283.93 Feet** to a point for a corner of the tract herein described;
- 19) **THENCE** along a curve to the left, having a radial bearing of North 64 Deg. 27 Min. 54 Sec. West, with a radius of 900.00 Feet, an Arc Length of 248.76 Feet, through a delta angle of 15 Deg. 50 Min. 13 Sec., with a chord bearing North 17 Deg. 36 Min. 59 Sec. East and a chord distance of 247.97 Feet to a point of tangency of said curve and an angle point of the tract herein described;
- 20) **THENCE North 09 Deg. 41 Min. 53 Sec. East** a distance of **104.27 Feet** to a point for a corner of the tract herein described;
- 21) **THENCE North 80 Deg. 18 Min. 07 Sec. West** a distance of **80.00 Feet** to the **POINT OF ENDING** of the centerline herein described and bears North 20 Deg. 46 Min. 14 Sec. East a distance of 602.44 feet from the Northeast corner of Lot 60, La Floresta Subdivision Phase I recorded in Volume 55, Page 170 of the Map Records, Hidalgo County, Texas. (Having Coordinate values of X = 1075696.4609 Y = 16631935.9619 of the Texas State Plane Coordinate System, South Zone, NAD 83)

Basis of bearings on this metes and bounds are as per Texas Sate Plane Coordinate System, South Zone, NAD 83. All dimensions are in feet and decimals thereof.

---

## AFFIDAVIT OF ISABEL POSADAS

---

STATE OF TEXAS  
COUNTY OF HIDALGO

§ KNOW ALL MEN BY THESE  
§ PRESENTS:

BEFORE ME, the undersigned authority, in the State of Texas, on this day personally appeared Isael Posadas, known to me as the person whose name is subscribed to the foregoing Affidavit, and who, being by me first duly sworn, on his oath deposed and stated as follows:

“My name is Isael Posadas. I am a Professional Engineer and the engineer for Hidalgo County Irrigation District No. One (“HCID NO. ONE”). I am above the age of eighteen, have never been convicted of a felony or a crime of moral turpitude, and am competent to make this affidavit. The facts stated herein are within my personal knowledge and are true and correct.

1. HCID NO. ONE is a duly created Irrigation District organized and operating under the laws of the State of Texas that maintains an open irrigation outtake canal just south of the intersection of Freddy Gonzalez Drive and Bicentennial Boulevard in McAllen, Texas (the “Canal”). Two 72” reinforced concrete pressure pipes (the “Pipes”), which sit on a gravel bed, run east and west below a proposed expansion of Bicentennial Boulevard connecting the Canal on each side of the proposed roadway. The Canal services numerous HCID NO. ONE customers from this intersection north to Highway 107 in Edinburg, then east along Highway 107, and continuing north of the University of Texas at Rio Grande Valley campus. A majority of the drinking water supplied to the City of Edinburg flows through the Canal.
2. The City of McAllen sought a right-of-way from HCID No. One as part of its plan for two future roadway crossings at the Canal (the “Bicentennial Right-of-Way”). In order to accommodate said roadway crossings, it was necessary to install irrigation siphon infrastructure. On or about March 15, 2017, HCID No. One and the City of McAllen entered into an Interlocal Cooperation Agreement (the “Agreement”) related to siphon crossings at the Canal. The City of McAllen agreed to provide all construction plans and to pay all construction-related costs associated with the siphon crossing. The City of McAllen also installed below the Canal all of the water and sewer lines necessary for the expansion of utilities as part of the roadway expansion. HCID No. One entered into this Agreement because it would eliminate future disruption of its operations near the Canal, and in exchange for the City of McAllen’s design and installation of the siphon infrastructure. In exchange, HCID No. One granted the City of McAllen the right-of-way as was necessary for its future roadway crossings.

3. HCID NO. 3 intends to extend its pipeline underneath the Pipes. To do so, a utility contractor will have to dig a boring receiving station on the north side of the Canal, bore and excavate material sitting below HCID No. One's existing pipes, and install steel casing. The necessary location of the boring receiving station is in such close proximity to HCID No. One property that it will interfere with and practically destroy HCID No. One's outtake pipe and canal on the north side of the Canal, which will prevent service to HCID No. One's customers. Additionally, the depth at which the HCID 3 Pipe is planned to be placed according to the most recent plan presented by HCID NO. 3, will destroy HCID No. One's Pipes because the vibrations caused by the boring will disturb the gravel bedding supporting the Pipes. This will cause the Pipes' seals to crack and leak, which will halt HCID No. One's operations.
4. If HCID No. 3 proceeds with the expansion of the HCID 3 Pipe under its current plan, it will certainly disturb, if not destroy, HCID No. One's operations. I have explained to HCID NO. 3 for months, including at a March 2020 meeting attended by me, the City of McAllen's engineer, and HCID NO. 3's engineer, that the current plan is insufficient and does not include specifications for trench protection, for the receiving station, or any details about the soil conditions around and below HCID No. One's Pipes and Canal.

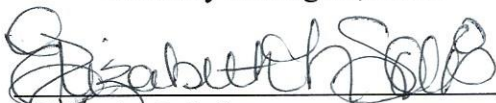
FURTHER AFFIANT SAYETH NAUGHT.

Executed this 28th day of August, 2020.



  
Isael Posadas

SUBSCRIBED AND SWORN TO BEFORE ME the undersigned authority, on this the 28th day of August, 2020.



Elizabeth N. Solis

Notary Public State of Texas

My commission expires: March 04, 2022

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Joseph Vale  
Bar No. 24084003  
jvale@atlashall.com  
Envelope ID: 45793709  
Status as of 8/28/2020 2:26 PM CST

Associated Case Party: Hidalgo County Irrigation District No. 1

Name	BarNumber	Email	TimestampSubmitted	Status
Meredith Helle	24106188	mlarson@atlashall.com	8/28/2020 2:21:19 PM	SENT
Allison Boyle	24087197	aboyle@atlashall.com	8/28/2020 2:21:19 PM	SENT
Joel Vale	24084003	jvale@atlashall.com	8/28/2020 2:21:19 PM	SENT
Meredith D.Helle		mhelle@atlashall.com	8/28/2020 2:21:19 PM	SENT
Tammie Rodriguez		tjr@atlashall.com	8/28/2020 2:21:19 PM	SENT
Nikki Pugmire		nmowbray@atlashall.com	8/28/2020 2:21:19 PM	SENT

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Frank Edward Weathered	20998600	frank@weatheredlaw.com	8/28/2020 2:21:19 PM	SENT
Randolph K. Whittington	21404500	chagofuentes@rkwlaw.com	8/28/2020 2:21:19 PM	SENT
Warren Anderson	24055106	banderson@jw.com	8/28/2020 2:21:19 PM	SENT
Daniel G. Gurwitz	787608	dgurwitz@atlashall.com	8/28/2020 2:21:19 PM	SENT
Mel Galvan		Mel@dcklawyers.com	8/28/2020 2:21:19 PM	SENT